Exhibit 2

Kahalah Clay
Circuit Clerk

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Event Date	Event Description	Party Type	Party Name
5/11/2017	MOT:MOTION	ATY PLAINTIFF	ROGERS KEVIN B
5/11/2017	DOC:NOTICE OF FILING	ATY PLAINTIFF	ROGERS KEVIN B
5/10/2017	SUM:SUMMONS ISSUED	ATY PLAINTIFF	ROGERS KEVIN B
5/10/2017	SUM:SUMMONS ISSUED	ATY PLAINTIFF	ROGERS KEVIN B
5/10/2017	SUM:SUMMONS ISSUED	ATY PLAINTIFF	ROGERS KEVIN B
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5/10/2017	SUM:SUMMONS ISSUED	ATY PLAINTIFF	ROGERS KEVIN B
5/10/2017	SUM:SUMMONS ISSUED	ATY PLAINTIFF	ROGERS KEVIN B
5/9/2017	DOC:RECEIPT	ATY PLAINTIFF	ROGERS KEVIN B
5/9/2017	ASM:COMPLAINT FILING FEE	ATY PLAINTIFF	ROGERS KEVIN B
5/8/2017	DOC:ENTRY OF APPEARANCE	ATY PLAINTIFF	ROGERS KEVIN B
5/8/2017	DOC:AFFIDAVIT	ATY PLAINTIFF	ROGERS KEVIN B
5/8/2017	OPN:COMPLAINT FILED	ATY PLAINTIFF	ROGERS KEVIN B

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STATE OF ILLINOIS)
) SS
COUNTY OF ST CLAIR)

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST CLAIR COUNTY, ILLINOIS

JESSICA CASEY, MELODY EDWARDS, and DEBBIE FOSTER, individually, and, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

ROGER C. DENTON, individually; SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, individually; BURG, SIMPSON, ELDREDGE, HERSH & JARDINE, P.C.; MICHAEL A. LONDON, individually; DOUGLAS & LONDON, P.C.; MARK R. NIEMEYER, individually; NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, individually; DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON, individually; PETERSON & ASSOCIATES, P.C.; GREGORY McEWEN, individually; and McEWEN LAW FIRM, LTD.

Defendants.

NO. 17-L-250

Kahalah A. Clay
******* Electronically Filed *******
Transaction Id : 1716328719
17L250
FILEDATE : 05/08/2017
HODGKINS,EMILY

CLASS ACTION COMPLAINT

Plaintiffs, Jessica Casey, Melody Edwards and Debbie Foster, individually and on behalf of all others similarly situated, by and through their attorney, Kevin Rogers, complain as follows:

NATURE OF ACTION

1. This is a class action brought by Jessica Casey, Melody Edwards and Debbie

Foster, individually, and on behalf of all others similarly situated, against the above named Defendants under Illinois common law for legal malpractice in that they allowed their cases along with others of the putative class to be dismissed with prejudice by not complying with an order of court.

2. Plaintiffs' underlying cause of action arose from their use and ingestion of a prescribed contraceptive medication entitled; Yaz®/Yasmin®, Ocella and Gianci (hereinafter, and collectively, "Yaz") which was brought against the manufacturer Defendant Bayer Healthcare Pharmaceuticals, Inc., ("Bayer").

3. Underlying Plaintiffs alleged that Bayer, through a standardized advertising, promotional, and marketing campaign hatched, incubated, facilitated, and consummated by them in a uniform manner, engaged in unfair and deceptive marketing by purposefully misrepresenting, concealing, and omitting the fact that the consumption of Yaz by a consumer would substantially and/or exponentially increase the consumer's risk of having a thrombosis, heart attack, stroke, or other cardiovascular complications. It was alleged that Bayer had purposefully hidden this fact from consumers.

4. Bayer, it was alleged, omitted the afore disclosures in order to sell Yaz to consumers under false pretenses, and to sell millions of dollars worth of Yaz worldwide which it would not have otherwise sold had it made the proper disclosures, and, it has violated respective consumer fraud statutes, were strictly liable in tort for manufacturing and distributing this product, ineffectively warned consumers of the products dangers, and, that their conduct was otherwise negligent and/or fraudulent against Plaintiffs and the class members.

5. The legal malpractice here alleged occurred when the Defendants failed to

respond to a motion to dismiss as mandated by a order of the federal district court. As a result of their failures to act and omissions, the pending cases of the putative class were dismissed with prejudice on January 7, 2016; docketed January 11, 2016.

6. Plaintiffs bring this case on behalf of themselves and a class of clients of the named Defendants; (the "Class").

JURISDICTION AND VENUE

7. Venue. This court has jurisdiction over this litigation under Illinois Code of Civil Procedure, 735 ILCS 5/2-101 (the County in which the transaction or some part thereof occurred out of which the cause of action arose).

8. Jurisdiction. Jurisdiction of this Court arises under 735 ILCS 5/2-209(a)(1) (for transacting business within the State), 735 ILCS 5/2-209(a)(2) (commission of a tortious act within the State), and, 735 ILCS 5/2-209(a)(11) (for the breach of any fiduciary duty within this State).

PARTIES

9. Plaintiff and proposed class representative Jessica Casey, is and was at all times relevant a citizen and resident of the County of Hardin in the State of Kentucky.

10. Plaintiff and proposed class representative Melody Edwards, is and was at all times relevant, a citizen and resident of the County of Johnson in the State of Kansas.

11. Plaintiff and proposed class representative Debbie Foster, is and was at all times relevant, a citizen and resident of the County of Kershaw in the State of South Carolina.

12. Defendant, Roger C. Denton, ("Denton"), is a citizen and resident of the County of St. Louis in the State of Missouri. He was a court designated liaison counsel in ***In Re: Yasmin and Yaz (drospirenone) Marketing, Sales Practices and Products Liability Litigation***, 3:09-md-02100-DRH-CJP, ("**MDL**"). He is here sued in his individual capacity.

13. Defendant Schlichter, Bogard & Denton, LLP, ("Schlichter Bogard") is a limited liability partnership duly organized under the laws of the State of Missouri and, whose principal place of business is in St. Louis, Missouri. Schlichter Bogard at all times relevant was the employer of Roger C. Denton and is here sued on a theory of *respondeat superior*.

14. Defendant Michael S. Burg, ("Burg"), is a citizen and resident of the County of Arapahoe in the State of Colorado. He was a court designated lead counsel in the **MDL**. He is here sued in his individual capacity.

15. Defendant Burg, Simpson, Eldredge, Hersh & Jardine, P.C., ("Burg Simpson") is a professional corporation duly organized under the laws of the State of Colorado and, whose principal place of business is in Englewood, Colorado. Burg Simpson was at all times relevant the employer of Michael S. Burg and is here sued on a theory of *respondeat superior*.

16. Defendant Michael A. London, ("London"), is a citizen and resident of the County of New York in the State of New York. He was a court designated lead counsel in the **MDL**. He is here sued in his individual capacity.

17. Defendant Douglas & London, P.C. is a professional corporation duly organized under the laws of the State of New York and, whose principal place of business is in New York, New York. Douglas & London was at all times relevant the employer of Michael A. London and is here sued on a theory of *respondeat superior*.

18. Defendant Mark R. Niemeyer, ("Niemeyer") is a citizen and resident of the County of St. Louis in the State of Missouri. He was a court designated lead counsel in the **MDL.** He is here sued in his individual capacity.

19. Defendant Niemeyer, Grebel & Kruse, LLC, ("Niemeyer Grebel"), is a limited liability corporation duly organized under the laws of the State of Missouri and, whose principal place of business is in St. Louis, Missouri. Niemeyer Grebel was at all times relevant the employer of Mark R. Niemeyer and is here sued on a theory of *respondeat superior*.

20. Defendant Daniel P. Massey, ("Massey"), is a citizen and resident of the County of Maricopa in the State of Arizona. He was at all times relevant individual attorney and counsel for the Plaintiff Jessica Casey in: ***Casey v. Bayer HealthCare Pharmaceuticals, Inc., et al.***; No. 14-cv-10387. He is here sued in his individual capacity.

21. Defendant Daniel Massey Law Firm, P.C., ("Massey Firm"), is a professional corporation organized and duly authorized under the laws of the State of Arizona. The Massey Firm's principal place of business is in the City of Scottsdale, County of Maricopa in the State of Arizona. The Massey Firm was at all times relevant the employer of Daniel P. Massey and is here sued on a theory of *respondeat superior*.

22. Defendant David M. Peterson, ("Peterson") is a citizen and resident of the City of Kansas City, County of Jackson in the State of Missouri. He was at all times relevant individual attorney and counsel for Melody Edwards in: ***Edwards v. Bayer Corporation, et al.***; No. 12-cv-11370. He is here sued in his individual capacity.

23. Defendant Peterson & Associates, P.C., ("Peterson & Associates") is a professional corporation organized and duly authorized under the laws of the State of Missouri.

Peterson & Associates' principal place of business is in the City of Kansas, County of Jackson in the State of Missouri. Peterson & Associates was at all times relevant the employer of David M. Peterson and is here sued on a theory of *respondeat superior*.

24. Defendant Gregory McEwen is a citizen and resident in the County of Dakota in the State of Minnesota. He was at all times relevant individual attorney and counsel for the Plaintiff Debbie Foster in: ***Foster v. Bayer HealthCare Pharmaceuticals, Inc., et al.***; No. 14-cv-10003. He is here sued in his individual capacity.

25. Defendant McEwen Law Firm, Ltd., ("McEwen Firm"), is a Minnesota Corporation organized and duly authorized under the laws of the State of Minnesota. The McEwen Firm's principal place of business is in the City of Inver Grove Heights, County of Dakota in the State of Minnesota. The McEwen Firm was at all times relevant the employer of Gregory McEwen and is here sued on a theory of *respondeat superior*.

THE CLASS

26. Representative Class Plaintiffs Casey, Edwards and Foster bring this case as a class action pursuant to the Illinois Code of Civil Procedure and Supreme Court Rules. Plaintiffs seek certification of a class of Illinois purchasers of Yaz and clients of the Defendants defined as:

> All individuals who were prescribed, obtained and consumed Bayer-manufactured Yaz and/or its generic, Bayer-manufactured counterparts from January 1, 1999 up to and including the present and whose cases against Bayer were dismissed with prejudice in the U.S. District Court by its order of January 7, 2016 (docketed January 11, 2016) for failure to comply with that Court's standing Case Management Order No. 79 because the Defendants Roger C. Denton, Michael S. Burg, Michael A. London, Mark R. Niemeyer, Daniel P. Massey, David M. Peterson, and Gregory McEwen breached the standard of care and their duties owed the named Plaintiffs and the Class resulting in their being damaged. Plaintiffs Jessica Casey, Melody Edwards and Debbie Foster are members and

representatives of the class in that they were prescribed, obtained and consumed Yaz and/or its generic Bayer-manufactured counter-part for their personal use within the class period and, as a result, suffered injury, damages and future injury as a consequence of said use. Plaintiffs' lawsuits were dismissed with prejudice because the above named Defendants' negligence resulting in their being damaged by their lost opportunity to be made whole.

27. This action is proper for class treatment under 735 ILCS 5/2-801 of the Illinois Code of Civil Procedure. The proposed class is so numerous that individual joinder of all members is impracticable. The exact number and identities of the class members are known to Plaintiffs based upon the Court's docketed order of January 11, 2016, the class number is forty four (44).

28. Questions of law and fact arise from Bayer's conduct in misrepresenting Yaz as a safe product suitable for consumption by consumers. Such questions are common to all Class members and predominate over any questions affecting only individual Class members.

29. Additionally, questions of law and fact arise from Lead and Liaison Class and Representative Counsel's conduct in facilitating the dismissal of the putative Class's complaints with prejudice by not complying with an order of Court. Such questions are common to all Class members and predominate over any questions affecting only individual Class members. The myriad of questions of law and fact common to the Class include but are not limited to:

a) whether Yaz causes arrhythmia, cardiac arrest/heart attack, intracardiac thrombus, pulmonary embolism, stroke or other cardiovascular complications in women in their child bearing years that consumed Yaz;

b) whether Bayer markets and misrepresents Yaz as a safe product, fit for human consumption;

c) whether Bayer failed to adequately disclose to consumers that the use of Yaz substantially increases the risks of arrhythmia, cardiac arrest/heart attack, intracardiac thrombus, pulmonary embolism, stroke or other cardiovascular complications;

d) whether Bayer's failure to disclose the dangers of Yaz is a material omission of fact;

e) whether Bayer engaged in a marketing practice intended to conceal the dangers of Yaz;

f) whether Bayer's sales and marketing practices constitutes strict products liability; defective manufacturing;

g) whether Bayer's sales and marketing practices constitutes strict products liability; design defect;

h) whether Bayer's sales and marketing practices violates product liability; defect due to inadequate warning;

i) whether Bayer's sales and marketing practices constitutes negligence;

j) whether Bayer's sales and marketing practices constitutes fraud; and,

k) whether Bayer's sales and marketing practices breaches express warranties of the product;

l) whether Bayer's sales and marketing practices breaches implied warranties of the product;

m) whether Bayer's sales and marketing practices violated the Plaintiff's applicable state consumer fraud and deceptive practices acts; and,

n) whether Bayer should be barred from marketing Yaz in a deceptive and uniform manner;

o) whether there existed an attorney-client relationship between Plaintiffs and the Class and, the Defendants, and each of them.

p) whether the Defendants, owed a duty to the Plaintiffs and the Class;

q) whether the Defendants, and each of them, breached their duty and the applicable standards of care by failing to abide by an order of court that resulted in the Plaintiffs and the Class' cases being dismissed;

r) were the Plaintiffs and the Class damaged as a result of the failures to act and omissions of the Defendants;

s) were the Defendants failures to act and omissions the proximate cause of the Plaintiffs and the Class' damages;

30. Plaintiffs will fairly and adequately represent and pursue the interests of Class members. Plaintiffs' counsel has vast experience in consumer class action cases. Plaintiffs believe that the nature of their claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Class.

31. Class treatment of these claims is an appropriate method for the fair and efficient adjudication of the controversy.

FACTS

Background Of The Sales And Marketing Of Yaz

32. Yaz®, Yasmin®, and, Ocella and Gianci (the generic counterparts) are birth control pills manufactured and marketed by Bayer Defendants. They are combination oral contraceptives, or "COCs," meaning that they contain an estrogen component and a progestin component. Together, these steroidal components work together in COCs to suppress ovulation, fertilization, and implantation and thus prevent pregnancy.

33. The progestin component of Yaz known as ***drospirenone*** when combined with the estrogen components was found to develop certain effects in users that are different from other progestins, and potentially more dangerous.

34. A dangerous effect of ***drospirenone*** is that it acts as a diuretic, which can cause an increase in potassium levels in the blood. This can lead to a condition known as hyperkalemia

if the potassium levels become too high. Hyperkalemia can cause heart rhythm disturbances, such as extrasystolies, pauses, or bradycardia. If left untreated, hyperkalemia can be fatal. If hyperkalemia disrupts the normal heart rhythms, the flow of blood through the heart can be slowed to the point that it permits blood clots to form. Blood clots in the heart can then lead to heart attacks, or the clots can break off and travel to the lungs where they can cause pulmonary embolism, or can travel to the brain causing stroke. The diuretic nature of ***drospirenone*** also attributes to blood clot formation elsewhere in the body.

35. An additional dangerous effect of ***drospirenone*** is that in acting as a diuretic, it can result in dehydration. Dehydration, may lead to the formation of gall stones and increased levels of cholesterol in the blood and, may lead to more serious gallbladder disease.

36. Upon information and belief, it was alleged that Bayer knew or should have known that the use of ***drospirenone*** in Yaz causes arrhythmia, cardiac arrest/heart attack, intracardiac thrombus, pulmonary embolism, deep vein thrombosis, stroke, and/or gallbladder disease, which can require surgical intervention.

37. During the brief time that Yaz has been sold in the United States, hundreds of reports of injury and death have been submitted to the FDA in association with Defendants' products. These reports include deaths associated with cardiac arrhythmia, cardiac arrest, intracardiac thrombus, pulmonary embolism, and stroke in women in their child bearing years.

38. Bayer not only ignored the increased risk of the development of the aforementioned injuries associated with the use of Yaz, but they have, through their marketing and advertising campaigns, urged women to use Yaz instead of birth control pills that present a safer alternative.

Plaintiffs' Use of Yasmin and Resulting Injuries

39. Notwithstanding claims of Bayer regarding the effectiveness and safety of Yaz, and/or its generic counterparts, Plaintiff's medical provider prescribed said to Jessica Casey which she then used.

40. As a direct and proximate result of using Yaz, Jessica Casey suffered injury from a thrombosis in the mid inferior vena cava in March 2010.

41. At the time of her injuries, Plaintiff Jessica Casey was unaware that Yaz was defective and presented a significantly higher risk of injuries, such as sinus thrombosis and she had no reason to believe that Bayer's acts and omissions caused her harm.

42. As a result of Bayer's claims regarding the effectiveness and safety of Yaz Plaintiff Melody Edward's medical provider prescribed and Plaintiff began using Yaz and/or its generic counterparts, in 2010 until she suffered sinus thrombosis on or about September 24, 2010.

43. At the time of her injuries, Plaintiff Melody Edwards was unaware that Yaz was defective and presented a significantly higher risk of injuries, such as sinus thrombosis and she had no reason to believe that Bayer's actions or omissions caused her harm.

44. As a direct and proximate result of using Yaz, Melody Edwards suffered the injuries described above.

45. Plaintiff Debbie Foster's medical provider prescribed and she began using Yaz, and/or its generic counterparts, in or about November, 2010.

46. As a direct and proximate result of using Yaz, Debbie Foster suffered from a

pulmonary embolism on or about January, 2011, resulting in ongoing physical pain, significant changes in lifestyle, medical, health, incidental and related expenses, medical monitoring and/or medications, and the fear of developing additional health consequences.

47. Ms. Foster did not know, nor could she have reasonably discovered through the use of reasonable diligence that Yaz wrongfully caused her to suffer a deep vein thrombosis on or about January, 2011, and that she had a claim against Bayer until less than one year from the date of filing her underlying action.

48. Despite the fact that Bayer knew or should have known of the serious health risks associated with the use of Yaz, and/or its generic counterparts, Bayer failed to warn the above named Plaintiffs and/or their health care providers of said serious risks before they used the product.

Plaintiffs' Underlying Causes Of Action

49. Named Plaintiffs brought their respective underlying cases against Defendants for damages associated with their ingestion of the pharmaceutical drugs Yaz (ethinyl estradiol and ***drospirenone***), an oral contraceptive designed, manufactured, marketed, and distributed by Defendants. The respective causes of the named Plaintiffs were: ***Jessica Casey v Bayer Healthcare Pharmaceuticals, Inc., et al***, 3:14-cv-10387-DRH-PMF; ***Melody Edwards v. Bayer Corporation, Inc., et al***, 3:12-cv-11370-DRH-PMF; and, ***Debbie Foster v Bayer Healthcare Pharmaceuticals, Inc., et al,*** 3:14-cv-10003-DRH-PMF. The afore were three of thousands of suits consolidated for pretrial proceedings in the MDL as part of multidistrict litigation in the Southern District of Illinois.

50. Jessica Casey was originally represented by the Defendant Daniel P. Massey of the Daniel Massey Law Firm, P.C.

51. Melody Edwards was originally represented by the Defendants David M. Peterson of Peterson & Associates, P.C.

52. Debbie Foster was represented by the Defendant Gregory McEwen of the Defendant McEwen Law Firm, Ltd.

53. The underlying causes of action were thereafter transferred to the United States District Court for the Southern District of Illinois by the Judicial Panel on Multidistrict Litigation and captioned: ***In Re: Yasmin and Yaz (drospirenone) Marketing, Sales Practices and Products Liability Litigation***, 3:09-md-02100-DRH-CJP.

54. On or about November 10, 2009, responsive to a Plaintiffs' motion for class leadership, the MDL Court issued Order No. 2: Order Appointing Plaintiffs' Steering Committee and Interim Class Counsel, ("Order No. 2") naming Roger Denton as Liaison counsel, and, Michael S. Burg, Michael A. London and Mark R. Niemeyer as interim lead counsel. Denton, Burg, London and Niemeyer were also designated members of the Plaintiffs' Steering Committee, ("PSC").

55. MDL Order No. 2, set out duties and responsibilities of the PSC.

56. Among the numerous duties and responsibilities set out in the order of November 10, 2009, was a directive that Denton, Burg, London and Niemeyer were to "[s]ubmit and argue all verbal or written motions presented to the Court or Magistrate on behalf of the PSC as well as oppose when necessary any motions submitted by defendants or other parties which involve matters within the sphere of the responsibilities of the PSC."

57. By their appointment as Liaison and/or Class Counsel, Denton, Burg, London and Niemeyer were reposed by the Court and applicable statutes with duties to the putative class members of trust, confidence and loyalty.

58. In addition, Rule 23 of the Federal Rules Of Civil Procedure imposed upon Liaison and/or Class Counsel, Denton, Burg, London and Niemeyer that they must fairly and adequately represent the interests of the Class.

59. By their appointment as Liaison and/or Class Counsel, Denton, Burg, London and Niemeyer were, by the Court's order of November 10, 2009, fiduciaries of the putative class members.

60. Liaison and/or Class Counsel associated with the individual attorneys including; Defendant Daniel P. Massey of the Daniel Massey Law Firm, P.C., the Defendants David M. Peterson of Peterson & Associates, P.C. and Defendant Gregory McEwen of the Defendant McEwen Law Firm, Ltd. to pursue the prosecution of the Class' claims to make Plaintiffs and the Class whole as well as an award of attorneys fees and costs thus exhibiting and manifesting a community of interest.

61. In addition, Order No. 2 authorized control and management by Denton, Burg, London and Niemeyer over the class, the individual cases and individual counsel.

62. Liaison and/or Class Counsel and, the individual class attorneys had a proprietary interest in the MDL by advancing and incurring costs and expenses.

63. Liaison and/or Class Counsel associated with the individual class attorneys worked jointly and severally to obtain a resolution for the Plaintiffs to the class claims.

64. Liaison and/or Class Counsel and, the individual class attorneys maintained the

right to control the prosecution of the named class Plaintiff's cases.

65. Liaison and/or Class Counsel and, the individual class attorneys kept and ultimately would and/or did submit time and task for an award of attorneys fees at the conclusion of all phases of the case.

66. Conversely, Liaison and/or Class Counsel and, the individual class attorneys if unsuccessful would bear any losses in the area of costs advanced in prosecution of the litigation.

67. Liaison and/or Class Counsel and, the individual class attorneys were joint venturers.

68. During the course of the MDL, the underlying Defendant Bayer settled many of the cases in the consolidated litigation.

69. The remaining unsettled cases were subject to an order of the MDL in August of 2015; Case Management Order No. 79. ("CMO 79"), creating two "tracks" for purposes of resolving the remaining cases.

70. The tracks set out methods for resolving cases opting for settlement and providing for settlement negotiations (Section II) and other cases that were required discovery and expert reports in ostensible preparation for trial (Section III).

71. The individual Defendants, and each of them failed to abide by Sections II and III.

72. The August order set out hard and fast dates of compliance for both the underlying Plaintiffs and Defendant Bayer.

73. Pursuant to CMO 79, each Plaintiff had 14 days to file an opposition to the Bayer Defendants' motions to dismiss.

74. CMO 79 further provided that failure to timely file a response in opposition "will result in an automatic dismissal with prejudice."

75. Liaison and/or Class Counsel and, the individual class attorneys failed to file responses in opposition to the Bayer Defendants' motion to dismiss.

76. As a result of the Liaison and/or Class Counsel and, the individual class attorneys failure to oppose the afore motion, on January 11, 2016 the Honorable Judge David R. Herndon ordered that the Plaintiffs and putative class members be dismissed with prejudice.

COUNT I

Legal Malpractice vs. Lead Attorneys And Individual Counsel

77. Plaintiff restates, realleges, adopts and incorporates the allegations set forth in as paragraphs 1. - 76. above as paragraphs 1. - 76. of Count I; ***in haec verba***.

78. The Individual Defendants, and each of them, jointly and severally, knew or should have known that their failure to file a timely response to Bayer's motion to dismiss would result in the loss of any rights or remedies that the Plaintiffs and the Class would have had against Bayer.

79. The Individual Defendants , and each of them, jointly and severally, owed a duty to the Plaintiffs and the putative class members to file a responsive pleading to Bayer's motion to dismiss within 14 days as set out in CMO 79 which mandated that they do so.

80. The Individual Defendants, and each of them, jointly and severally, violated the applicable standard of care for attorneys so situated or, otherwise, failed to exercise a reasonable degree of skill and care in their representation of the Plaintiffs and the putative class by failing to

file a responsive pleading to Bayer's motion to dismiss within 14 days as set out in CMO 79 which mandated that they do so.

81. As a direct and proximate result of the failures to act and omissions of the individually named Defendants aforesaid and their failures to act and omissions as more specifically described above, Plaintiffs and the putative class lost any recovery and/or any chance of recovery they may have had which would include compensation for any personal injury damages, lost wages and future damages that they suffered as a consequence of their consumption and ingestion of Yaz resulting in its deleterious effects on them.

82. Plaintiffs demand trial by jury for all non-equity matters.

WHEREFORE, Plaintiffs, Jessica Casey, Melody Edwards and Debbie Foster on behalf of themselves and all others similarly situated, pray this Court rule as follows:

A. Enter an order certifying the Class pursuant to 735 ILCS 5/2-801 of the Illinois Code of Civil Procedure and naming Plaintiffs as Class Representatives and their attorney as Lead Class Counsel to represent the Class;

B. Enter an order finding in favor of the Plaintiffs and the Class and against the individual Defendants Rogers C. Denton, Michael S. Burg, Michael A. London, Mark R. Niemeyer, Gregory McEwen, Daniel P. Massey and David M. Peterson; jointly and severally, as to the legal malpractice asserted herein;

C. Enter judgment against the individual Defendants Rogers C. Denton, Michael S. Burg, Michael A. London, Mark R. Niemeyer, Daniel P. Massey, David M. Peterson and Gregory McEwen.

D. Enter an order awarding damages in an amount to be determined by the Court or jury;

E. Enter an order that prejudgment interest be assessed upon all amounts awarded;

F. Enter an order of restitution and all other forms of equitable monetary relief;

G. Enter an order awarding Plaintiffs and the Class expenses and costs of suit; and,

H. For such other and further relief as the Court deems appropriate.

COUNT II

Respondeat Superior Claim

83. Plaintiff restates, realleges, adopts and incorporates the allegations set forth in paragraphs 1.- 82. of Count I of this complaint as paragraph Nos. 1. - 82. of Count II; ***in haec verba.***

84. At all times relevant, the Defendant Roger C. Denton was an employee and agent of the Defendant Schlichter Bogard.

85. At all times relevant, the Defendant Denton acted within the scope of the agency or employment with the Defendant Schlichter Bogard in the course of providing legal services for the Schlichter Bogard clients.

86. Defendant Schlichter Bogard hired, retained, supervised and otherwise controlled their agent and employee Roger C. Denton.

87. As a direct and proximate result of the Defendant Denton's aforesaid negligent failures to act and/or omissions as more specifically described above, Jessica Casey, Melody Edwards, Debbie Foster and the Class have lost any recovery and/or any chance of recovery they may have had which would include compensation for any personal injury damages and lost

billing that they suffered as a consequence of the dismissal of January 11, 2016.

88. The Defendant Schlichter Bogard by virtue of their supervision and control of their agent and employee Roger C. Denton is vicariously liable for his failures to act and omissions.

89. At all times relevant, the Defendant Michael S. Burg was an employee and agent of the Defendant Burg Simpson.

90. At all times relevant, the Defendant Burg acted within the scope of the agency or employment with the Defendant Burg Simpson in the course of providing legal services for the Burg Simpson clients.

91. Defendant Burg Simpson hired, retained, supervised and otherwise controlled their agent and employee Michael S. Burg.

92. As a direct and proximate result of the Defendant Burg's aforesaid negligent failures to act and/or omissions as more specifically described above, Jessica Casey, Melody Edwards, Debbie Foster and the Class have lost any recovery and/or any chance of recovery they may have had which would include compensation for any personal injury damages and lost wages that they suffered as a consequence of the dismissal of January 11, 2016.

93. The Defendant Burg Simpson by virtue of their supervision and control of their agent and employee Michael S. Burg is vicariously liable for his failures to act and omissions.

94. At all times relevant, the Defendant Michael A. London was an employee and agent of the Defendant Douglas & London.

95. At all times relevant, the Defendant London acted within the scope of the agency or employment with the Defendant Douglas & London in the course of providing legal services

for the Defendant Douglas & London clients.

96. Defendant Douglas & London hired, retained, supervised and other-wise controlled their agent and employee Michael A. London.

97. As a direct and proximate result of the Defendant London's aforesaid negligent failures to act and/or omissions as more specifically described above, Jessica Casey, Melody Edwards, Debbie Foster and the Class have lost any recovery and/or any chance of recovery they may have had which would include compensation for any personal injury damages and lost wages that they suffered as a consequence of the dismissal of January 11, 2016.

98. The Defendant Douglas & London by virtue of their supervision and control of their agent and employee Michael A. London is vicariously liable for his failures to act and omissions.

99. At all times relevant, the Defendant Mark R. Niemeyer was an employee and agent of the Defendant Niemeyer Grebel.

100. At all times relevant, the Defendant Niemeyer acted within the scope of the agency or employment with the Defendant Niemeyer Grebel in the course of providing legal services for the Defendant Niemeyer Grebel clients.

101. Defendant Niemeyer Grebel hired, retained, supervised and otherwise controlled their agent and employee Mark R. Niemeyer

102. As a direct and proximate result of the Defendant Niemeyer's aforesaid negligent failures to act and/or omissions as more specifically described above, Jessica Casey, Melody Edwards, Debbie Foster and the Class have lost any recovery and/or any chance of recovery they may have had which would include compensation for any personal injury damages and lost

wages that they suffered as a consequence of the dismissal of January 11, 2016.

103. The Defendant Niemeyer Grebel by virtue of their supervision and control of their agent and employee Mark R. Niemeyer is vicariously liable for his failures to act and omissions.

104. At all times relevant, the Defendant Daniel P. Massey, was an employee and agent of the Defendant Daniel Massey Law Firm.

105. At all times relevant, the Defendant Massey acted within the scope of the agency or employment with the Defendant Daniel Massey Law Firm in the course of providing legal services for the Defendant Daniel Massey Law Firm clients.

106. Defendant Daniel Massey Law Firm hired, retained, supervised and otherwise controlled their agent and employee Daniel Massey.

107. As a direct and proximate result of the Defendant Massey's aforesaid negligent failures to act and/or omissions as more specifically described above, Jessica Casey, and the Class have lost any recovery and/or any chance of recovery they may have had which would include compensation for any personal injury damages and lost wages that they suffered as a consequence of the dismissal of January 11, 2016.

108. The Defendant Daniel Massey Law Firm, P.C., by virtue of their supervision and control of their agent and employee Daniel P. Massey is vicariously liable for his failures to act and omissions.

109. At all times relevant, the Defendant David M. Peterson was an employee and agent of the Defendant Peterson & Associates.

110. At all times relevant, the Defendant Peterson acted within the scope of the agency

or employment with the Defendant Peterson & Associates in the course of providing legal services for the Defendant Peterson & Associates clients.

111. Defendant Peterson & Associates hired, retained, supervised and otherwise controlled their agent and employee David M. Peterson.

112. As a direct and proximate result of the Defendant Peterson's aforesaid negligent failures to act and/or omissions as more specifically described above, Melody Edwards, and the Class have lost any recovery and/or any chance of recovery they may have had which would include compensation for any personal injury damages and lost wages that they suffered as a consequence of the dismissal of January 11, 2016.

113. The Defendant Peterson & Associates by virtue of their supervision and control of their agent and employee David Peterson is vicariously liable for his failures to act and omissions.

114. At all times relevant, the Defendant Gregory McEwen was an employee and agent of the Defendant McEwen Firm.

115. At all times relevant, the Defendant McEwen acted within the scope of the agency or employment with the Defendant McEwen Firm in the course of providing legal services for the Defendant McEwen Firm clients.

116. Defendant McEwen Firm hired, retained, supervised and otherwise controlled their agent and employee Gregory McEwen.

117. As a direct and proximate result of the Defendant McEwen's's aforesaid negligent failures to act and/or omissions as more specifically described above, Debbie Foster and the Class have lost any recovery and/or any chance of recovery they may have had which

would include compensation for any personal injury damages and lost wages that they suffered as a consequence of the dismissal of January 11, 2016.

118. The Defendant McEwen Firm by virtue of their supervision and control of their agent and employee Gregory McEwen is vicariously liable for his failures to act and omissions.

119. Plaintiffs demand trial by jury for all non-equity matters.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray this Honorable Court rule as follows:

A. Find that this matter qualifies for class treatment and enter an order certifying the Class pursuant to 735 ILCS 5/2-801 of the Illinois Code of Civil Procedure and naming Plaintiffs as Class Representatives and their attorney as Class Counsel to represent the Class;

B. Find that the Defendants Niemeyer, Grebel & Kruse, LLC; Burg, Simpson, Eldredge, Hersh & Jardine; Douglas & London, P.C.; Schlichter, Bogard & Denton, LLP; Daniel Massey Law Firm, P.C.; Peterson & Associates, P.C.; and, McEwen Law Firm, Ltd. are vicariously, jointly and severally, liable for the failures to act and omissions of the Defendants Roger C. Denton, Michael S. Burg, Michael A. London, Mark R. Niemeyer, Daniel P. Massey, David M. Peterson and Gregory McEwen.

C. Enter judgment against the Defendants Niemeyer, Grebel & Kruse, LLC; Burg, Simpson, Eldredge, Hersh & Jardine; Douglas & London, P.C.; Schlichter, Bogard & Denton, LLP; Daniel Massey Law Firm, P.C.; Peterson & Associates, P.C.; and, McEwen Law Firm, Ltd.

D. Enter an order finding in favor of the Plaintiffs and the Class and against the Defendants Niemeyer, Grebel & Kruse, LLC; Burg, Simpson, Eldredge, Hersh & Jardine; Douglas & London, P.C.; Schlichter, Bogard & Denton, LLP; Daniel Massey Law Firm, P.C.; Peterson & Associates, P.C.; and, McEwen Law Firm, Ltd. upon principles of *respondeat superior*.

E. Enter an order awarding damages in an amount to be determined by the Court or jury;

F. Enter an order that prejudgment interest be assessed upon all amounts awarded;

G. Order restitution and all other forms of equitable monetary relief;

H. Enter an order awarding Plaintiffs and the Class expenses and costs of suit; and

I. For further relief as the Court deems appropriate.

Respectfully submitted:

s/ Kevin Rogers
Attorney for Plaintiffs and the Class

Kevin Rogers ARDC # 6192609
Law Offices Of Kevin Rogers
307 N. Michigan Avenue Suite 305
Chicago, IL 60601
T/ F (312) 332-1188 / (312) 332-0192
email: Kevin@Kevinrogerslaw.com

STATE OF ILLINOIS)
) SS
COUNTY OF ST CLAIR)

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST CLAIR COUNTY, ILLINOIS

JESSICA CASEY, MELODY EDWARDS, and DEBBIE FOSTER, individually, and, on behalf of themselves and all others similarly situated,	
Plaintiffs,	
v.	NO. 17-L-250
ROGER C. DENTON, individually; SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, individually; BURG, SIMPSON, ELDREDGE, HERSH & JARDINE, P.C.; MICHAEL A. LONDON, individually; DOUGLAS & LONDON, P.C.; MARK R. NIEMEYER, individually; NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, individually; DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON, individually; PETERSON & ASSOCIATES, P.C.; GREGORY McEWEN, individually; and McEWEN LAW FIRM, LTD.	
Defendants.	

Kahalah A. Clay
Electronically Filed
Transaction Id : 1716328719
17L250
FILEDATE : 05/08/2017
HODGKINS,EMILY

AFFIDAVIT / CERTIFICATION REGARDING DAMAGES SOUGHT

I, Kevin Rogers, attorney for the party Plaintiffs and the Class in the above-referenced lawsuit, pursuant to Supreme Court Rule 222(b) and subject to penalties as provided by 735 ILCS 5/1-109 state that the total money damages sought in this cause exceed the sum of $50,000.00.

s/ Kevin Rogers
Attorney for the Plaintiff

Kevin Rogers # 6192609 307 N. Michigan Ave, Ste 305, Chicago, IL 60601, (312) 332-1188

STATE OF ILLINOIS)
) SS
COUNTY OF ST CLAIR)

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST CLAIR COUNTY, ILLINOIS

JESSICA CASEY, MELODY EDWARDS, and DEBBIE FOSTER, individually, and, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

NO. 17-L-250

ROGER C. DENTON, individually; SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, individually; BURG, SIMPSON, ELDREDGE, HERSH & JARDINE, P.C.; MICHAEL A. LONDON, individually; DOUGLAS & LONDON, P.C.; MARK R. NIEMEYER, individually; NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, individually; DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON, individually; PETERSON & ASSOCIATES, P.C.; GREGORY McEWEN, individually; and McEWEN LAW FIRM, LTD.

Defendants.

Kahalah A. Clay
******* Electronically Filed *******
Transaction Id : 1716328719
17L250
FILEDATE : 05/08/2017
HODGKINS,EMILY

APPEARANCE

The undersigned hereby enters his appearance on behalf of the Plaintiffs Jessica Casey, Melody Edwards and Debbie Foster.

s/ Kevin Rogers
Attorney for the Plaintiffs and the Class

Kevin Rogers ARDC # 6192609
307 N. Michigan Ave, Ste 305
Chicago, IL 60601
T/F: (312) 332-1188 / (312) 332-0192
email: Kevin@kevinrogerslaw.com

ST CLAIR COUNTY
TWENTIETH CIRCUIT COURT, KAHALAH A. CLAY

RECEIPT #: C 000438810
RECEIVED OF: ROGERS KEVIN B
PART. ID: 1028345
BY CLERK: BJ
CHECKS:

DATE: 05-09-2017

TIME: 10:44:28
MEMO:

SUSPENSE ACCT ID: 000000229

CASH	CREDIT	CHANGE	OTHER
$0.00	$0.00	$0.00	$277.00

CASE NUMBER	EVENT	COURT/JUDGE	TAX NO.	AMOUNT
17-L-0250 CASEY VS DENTON PARTY: ROGERS KEVIN B	2023	PMT:CFIL COMPLAINT FILING FEE		$277.00

TOTAL RECEIPT... $277.00

CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois)
County of St. Clair) S.S.

Case Number 17-L-250

Amount Claimed in excess of one million

Plaintiff(s)		Defendant(s)
JESSICA CASEY, MELODY EDWARDS and DEBBIE FOSTER, individually and on behalf themselves and all others similarly situated	VS	ROGER C. DENTON, SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, BURG SIMPSON, ELDRIDGE, HERSCH & JARDINE, P.C. MICHAEL A. LONDON, DOUGLAS & LONDON, P.C. MARK R. NIEMEYER, NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON PETERSON & ASSOCIATES, P.C, GREGORY McEWEN, and McEWEN LAW FIRM, LTD.

Classification Prefix ______ Code ______ Nature of Action ______ Code ______

Pltf. Atty. Kevin B. Rogers Code ______
Address 307 N. Michigan Ave Suite 305
City Chicago. IL 60601 Phone 3123321188
Add. Pltf. Atty. ______ Code ______

TO THE SHERIFF: SERVE THIS DEFENDANT AT:

NAME Daniel P. Massey
THE MASSEY LAW FIRM P.C.
ADDRESS 14300 N. Northsight Blvd Suite1
CITY & STATE Scottsdale, AZ 85260

SUMMONS COPY

To the above named defendant(s)......:

[ ] A. You are hereby summoned and required to appear before this court at (court location) ______ at ______ M. On ______ 20___ to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint.

[x] B. You are summoned and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, in the office of the clerk of this court within 30 days after service of this summons, exclusive of the day of service. If you fail to do so, judgment of decree by default may be taken against you for the relief prayed in the complaint.

TO THE OFFICER:

This summons must be returned by the officer or other person to whom it was given for service, with indorsement thereon of service and fees if any, immediately after service. In the event that paragraph A of this summons is applicable this summons may not be served less than three days before the day of appearance. If service cannot be made, this summons shall be returned so indorsed.

This summons may not be served later than 30 days after its date.

Electronically Issued
Date 05/10/2017
Kahalah A. Clay
KAHALAH A. CLAY, Clerk
By HODGKINS,EMILY
Deputy Clerk
Trans ID : : 1716328719

WITNESS, ______ 20___

______
Clerk of Court

BY DEPUTY: ______

DATE OF SERVICE: ______ 20___
(To be inserted by officer on copy left with defendant or other person)

CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois)
County of St. Clair) S.S.

Case Number 17-L-250

Amount Claimed in excess of one million

JESSICA CASEY, MELODY EDWARDS and DEBBIE FOSTER, individually and on behalf themselves and all others similarly situated Plaintiff(s)	VS	ROGER C. DENTON, SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, BURG SIMPSON, ELDRIDGE, HERSCH & JARDINE,P.C. MICHAEL A. LONDON, DOUGLAS & LONDON,P.C. MARK R. NIEMEYER, NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON PETERSON & ASSOCIATES, P.C; GREGORY McEWEN, and McEWEN LAW FIRM, LTD. Defendant(s)

Classification Prefix ______ Code ______ Nature of Action ______ Code ______

Pltf. Atty. Kevin B. Rogers Code ______
Address 307 N. Michigan Ave Suite 305
City Chicago, IL 60601 Phone 3123321188
Add. Pltf. Atty. ______ Code ______

TO THE SHERIFF: SERVE THIS DEFENDANT AT:

NAME Michael A. London
DOUGLAS & LONDON, P.C.

ADDRESS 59 Maiden Lane, 6th Floor

CITY & STATE New York, NY 10038

SUMMONS COPY

To the above named defendant(s)......:

[ ] A. You are hereby summoned and required to appear before this court at (court location) ______ at ______ M. On ______ 20___ to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint.

[x] B. You are summoned and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, in the office of the clerk of this court within 30 days after service of this summons, exclusive of the day of service. If you fail to do so, judgment of decree by default may be taken against you for the relief prayed in the complaint.

TO THE OFFICER:

This summons must be returned by the officer or other person to whom it was given for service, with indorsement thereon of service and fees if any, immediately after service. In the event that paragraph A of this summons is applicable this summons may not be served less than three days before the day of appearance. If service cannot be made, this summons shall be returned so indorsed.

This summons may not be served later than 30 days after its date.

Electronically Issued
Date 05/10/2017
Kahalah A. Clay
KAHALAH A. CLAY, Clerk
By HODGKINS,EMILY
Deputy Clerk
Trans ID : : 1716328703

WITNESS, ______ 20___

______
Clerk of Court

BY DEPUTY: ______

DATE OF SERVICE: ______ 20___
(To be inserted by officer on copy left with defendant or other person)

CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois) S.S.
County of St. Clair)

Case Number 17-L-250

Amount Claimed in excess of one million

Plaintiff(s)		Defendant(s)
JESSICA CASEY, MELODY EDWARDS and DEBBIE FOSTER, individually and on behalf themselves and all others similarly situated	VS	ROGER C. DENTON, SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, BURG SIMPSON, ELDRIDGE, HERSCH & JARDINE,P.C. MICHAEL A. LONDON, DOUGLAS & LONDON,P.C. MARK R. NIEMEYER, NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON PETERSON & ASSOCIATES, P.C, GREGORY McEWEN, and McEWEN LAW FIRM, LTD.

Classification Prefix ______ Code ______ Nature of Action ______ Code ______

Pltf. Atty. Kevin B. Rogers Code ______
Address 307 N. Michigan Ave Suite 305
City Chicago, IL 60601 Phone 3123321188
Add. Pltf. Atty. ______ Code ______

TO THE SHERIFF: SERVE THIS DEFENDANT AT:
NAME DOUGLAS&LONDON, P.C.
ADDRESS 59 Maiden Lane, 6th Floor
CITY & STATE New York, NY 10038

SUMMONS COPY

To the above named defendant(s)......:

[ ] A. You are hereby summoned and required to appear before this court at (court location) ______ at ______ M. On ______ 20___ to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint.

[X] B. You are summoned and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, in the office of the clerk of this court within 30 days after service of this summons, exclusive of the day of service. If you fail to do so, judgment of decree by default may be taken against you for the relief prayed in the complaint.

TO THE OFFICER:

This summons must be returned by the officer or other person to whom it was given for service, with indorsement thereon of service and fees if any, immediately after service. In the event that paragraph A of this summons is applicable this summons may not be served less than three days before the day of appearance. If service cannot be made, this summons shall be returned so indorsed.

This summons may not be served later than 30 days after its date.

Electronically Issued
Date 05/10/2017
Kahalah A. Clay
KAHALAH A. CLAY, Clerk
By HODGKINS,EMILY
Deputy Clerk
Trans ID : : 1716328703

WITNESS, ______ 20___

______
Clerk of Court

BY DEPUTY: ______

DATE OF SERVICE: ______ 20___
(To be inserted by officer on copy left with defendant or other person)

CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois)
County of St. Clair) S.S.

Case Number 17-L-250

Amount Claimed in excess of one million

JESSICA CASEY, MELODY EDWARDS and DEBBIE FOSTER, individually and on behalf themselves and all others similarly situated

Plaintiff(s)

VS

ROGER C. DENTON, SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, BURG SIMPSON, ELDRIDGE, HERSCH & JARDINE,P.C. MICHAEL A. LONDON, DOUGLAS & LONDON,P.C. MARK R. NIEMEYER, NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON PETERSON & ASSOCIATES, P.C, GREGORY McEWEN, and McEWEN LAW FIRM, LTD.

Defendant(s)

Classification Prefix ______ Code ______ Nature of Action ______ Code ______

Pltf. Atty. Kevin B. Rogers Code ______
Address 307 N. Michigan Ave Suite 305
City Chicago, IL 60601 Phone 3123321188
Add. Pltf. Atty. ______ Code ______

TO THE SHERIFF: SERVE THIS DEFENDANT AT:

NAME Mark R. Niemeyer
NIEMEYER, GREBEL & KRUSE, LLC

ADDRESS 10 S. Broadway, Suite 1125

CITY & STATE St. Louis, MO 63102

SUMMONS COPY

To the above named defendant(s)......:

[ ] A. You are hereby summoned and required to appear before this court at (court location) ______ at ______ M. On ______ 20___ to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint.

[x] B. You are summoned and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, in the office of the clerk of this court within 30 days after service of this summons, exclusive of the day of service. If you fail to do so, judgment of decree by default may be taken against you for the relief prayed in the complaint.

TO THE OFFICER:

This summons must be returned by the officer or other person to whom it was given for service, with indorsement thereon of service and fees if any, immediately after service. In the event that paragraph A of this summons is applicable this summons may not be served less than three days before the day of appearance. If service cannot be made, this summons shall be returned so indorsed.

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Electronically Issued
Date 05/10/2017
Kahalah A. Clay
KAHALAH A. CLAY, Clerk
By HODGKINS,EMILY
Deputy Clerk
Trans ID : : 1716328703

WITNESS, ______ 20___

______
Clerk of Court

BY DEPUTY: ______

DATE OF SERVICE: ______ 20___
(To be inserted by officer on copy left with defendant or other person)

CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois) S.S.
County of St. Clair)

Case Number 17-L-250

Amount Claimed in excess of one million

JESSICA CASEY, MELODY EDWARDS and DEBBIE FOSTER, individually and on behalf themselves and all others similarly situated Plaintiff(s)	VS	ROGER C. DENTON, SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, BURG SIMPSON, ELDRIDGE, HERSCH & JARDINE, P.C. MICHAEL A. LONDON, DOUGLAS & LONDON, P.C. MARK R. NIEMEYER, NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON PETERSON & ASSOCIATES, P.C, GREGORY McEWEN, and McEWEN LAW FIRM, LTD. Defendant(s)

Classification Prefix ______ Code ______ Nature of Action ______ Code ______

Pltf. Atty. Kevin B. Rogers Code ______
Address 307 N. Michigan Ave Suite 305
City Chicago, IL 60601 Phone 3123321188
Add. Pltf. Atty. ______ Code ______

TO THE SHERIFF: SERVE THIS DEFENDANT AT:
NAME Michael S. Burg
BURG SIMPSON ELDREDGE HERSH
ADDRESS 40 Inverness Drive East
CITY & STATE Englewood, CO 80112

SUMMONS COPY

To the above named defendant(s)......:

[ ] A. You are hereby summoned and required to appear before this court at (court location) ______ at ______ M. On ______ 20___ to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint.

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TO THE OFFICER:

This summons must be returned by the officer or other person to whom it was given for service, with indorsement thereon of service and fees if any, immediately after service. In the event that paragraph A of this summons is applicable this summons may not be served less than three days before the day of appearance. If service cannot be made, this summons shall be returned so indorsed.

This summons may not be served later than 30 days after its date.

Electronically Issued
Date 05/10/2017
Kahalah A. Clay
KAHALAH A. CLAY, Clerk
By HODGKINS,EMILY
Deputy Clerk
Trans ID : : 1716328703

WITNESS, ______ 20___

Clerk of Court

BY DEPUTY: ______

DATE OF SERVICE: ______ 20___
(To be inserted by officer on copy left with defendant or other person)

I2F SUBMITTED - 1716328703 - KBROGERS65 - 05/05/2017 04:48:08 PM

CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois)
County of St. Clair) S.S.

Case Number 17-L-250

Amount Claimed in excess of one million

JESSICA CASEY, MELODY EDWARDS and DEBBIE FOSTER, individually and on behalf themselves and all others similarly situated Plaintiff(s)	VS ROGER C. DENTON, SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, BURG SIMPSON, ELDRIDGE, HERSCH & JARDINE, P.C. MICHAEL A. LONDON, DOUGLAS & LONDON, P.C. MARK R. NIEMEYER, NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON PETERSON & ASSOCIATES, P.C, GREGORY McEWEN, and McEWEN LAW FIRM, LTD. Defendant(s)

Classification Prefix ______ Code ______ Nature of Action ______ Code ______

Pltf. Atty. Kevin B. Rogers Code ______
Address 307 N. Michigan Ave Suite 305
City Chicago, IL 60601 Phone 3123321188
Add. Pltf. Atty. ______ Code ______

TO THE SHERIFF: SERVE THIS DEFENDANT AT:

NAME David M. Peterson
PETERSON & ASSOC P.C.

ADDRESS 801 W. 47th Street Suite 107

CITY & STATE Kansas City, MO 64112

SUMMONS COPY

To the above named defendant(s).......:

☐ A. You are hereby summoned and required to appear before this court at (court location) ______ at ______ M. On ______ 20___ to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint.

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Electronically Issued
Date 05/10/2017
Kahalah A. Clay
KAHALAH A. CLAY, Clerk
By HODGKINS,EMILY
Deputy Clerk
Trans ID : : 1716328703

WITNESS, ______ 20___

______
Clerk of Court

BY DEPUTY: ______

DATE OF SERVICE: ______ 20___
(To be inserted by officer on copy left with defendant or other person)

CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois) S.S.
County of St. Clair)

Case Number 17-L-250

Amount Claimed in excess of one million

Plaintiff(s)		Defendant(s)
JESSICA CASEY, MELODY EDWARDS and DEBBIE FOSTER, individually and on behalf themselves and all others similarly situated	VS	ROGER C. DENTON, SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, BURG SIMPSON, ELDRIDGE, HERSCH & JARDINE,P.C. MICHAEL A. LONDON, DOUGLAS & LONDON,P.C. MARK R. NIEMEYER, NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON PETERSON & ASSOCIATES, P.C, GREGORY McEWEN, and McEWEN LAW FIRM, LTD.

Classification Prefix ____________ Code ________ Nature of Action ______________ Code ________

Pltf. Atty. Kevin B. Rogers Code ______
Address 307 N. Michigan Ave Suite 305
City Chicago, IL 60601 Phone 3123321188
Add. Pltf. Atty. ______________ Code ______

TO THE SHERIFF: SERVE THIS DEFENDANT AT:

NAME THE MASSEY LAW FIRM, P.C.

ADDRESS 14300 N. Northsight Blvd Suite 108

CITY & STATE Scottsdale, AZ85260

SUMMONS COPY

To the above named defendant(s)......:

[ ] A. You are hereby summoned and required to appear before this court at (court location) ______________ at ________ M. On ________ 20___ to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint.

[x] B. You are summoned and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, in the office of the clerk of this court within 30 days after service of this summons, exclusive of the day of service. If you fail to do so, judgment of decree by default may be taken against you for the relief prayed in the complaint.

TO THE OFFICER:

This summons must be returned by the officer or other person to whom it was given for service, with indorsement thereon of service and fees if any, immediately after service. In the event that paragraph A of this summons is applicable this summons may not be served less than three days before the day of appearance. If service cannot be made, this summons shall be returned so indorsed.

This summons may not be served later than 30 days after its date.

Electronically Issued
Date 05/10/2017
Kahalah A. Clay
KAHALAH A. CLAY, Clerk
By HODGKINS,EMILY
Deputy Clerk
Trans ID : : 1716328719

WITNESS, ______________ 20____

____
Clerk of Court

BY DEPUTY: ______________

DATE OF SERVICE: ______________ 20____
(To be inserted by officer on copy left with defendant or other person)

CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois)
County of St. Clair) S.S.

Case Number 17-L-250

Amount Claimed in excess of one million

Plaintiff(s)		Defendant(s)
JESSICA CASEY, MELODY EDWARDS and DEBBIE FOSTER, individually and on behalf themselves and all others similarly situated	VS	ROGER C. DENTON, SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, BURG SIMPSON, ELDRIDGE, HERSCH & JARDINE,P.C. MICHAEL A. LONDON, DOUGLAS & LONDON,P.C. MARK R. NIEMEYER, NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON PETERSON & ASSOCIATES, P.C, GREGORY McEWEN, and McEWEN LAW FIRM, LTD.

Classification Prefix ______ Code ______ Nature of Action ______ Code ______

Pltf. Atty. Kevin B. Rogers Code ______
Address 307 N. Michigan Ave Suite 305
City Chicago, IL 60601 Phone 3123321188
Add. Pltf. Atty. ______ Code ______

TO THE SHERIFF: SERVE THIS DEFENDANT AT:

NAME Gregory McEwen
MCEWEN LAW FIRM LTD.

ADDRESS 5850 Blackshire Path

CITY & STATE Inver Grove Heights, MN 5507

SUMMONS COPY

To the above named defendant(s).......:

[ ] A. You are hereby summoned and required to appear before this court at (court location) ______ at ______ M. On ______ 20___ to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint.

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TO THE OFFICER:

This summons must be returned by the officer or other person to whom it was given for service, with indorsement thereon of service and fees if any, immediately after service. In the event that paragraph A of this summons is applicable this summons may not be served less than three days before the day of appearance. If service cannot be made, this summons shall be returned so indorsed.

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Electronically Issued
Date 05/10/2017
Kahalah A. Clay
KAHALAH A. CLAY, Clerk
By HODGKINS,EMILY
Deputy Clerk
Trans ID : : 1716328719

WITNESS, ______ 20___

______
Clerk of Court

BY DEPUTY: ______

DATE OF SERVICE: ______ 20___
(To be inserted by officer on copy left with defendant or other person)

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CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois) S.S.
County of St. Clair)

Case Number 17-L-250

Amount Claimed in excess of one million

JESSICA CASEY, MELODY EDWARDS and DEBBIE FOSTER, individually and on behalf themselves and all others similarly situated

Plaintiff(s)

VS

ROGER C. DENTON, SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, BURG SIMPSON, ELDRIDGE, HERSCH & JARDINE,P.C. MICHAEL A. LONDON, DOUGLAS & LONDON,P.C. MARK R. NIEMEYER, NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON PETERSON & ASSOCIATES, P.C, GREGORY McEWEN, and McEWEN LAW FIRM, LTD.

Defendant(s)

Classification Prefix ________ Code ________ Nature of Action ________ Code ________

Pltf. Atty. Kevin B. Rogers Code ______
Address 307 N. Michigan Ave Suite 305
City Chicago, IL 60601 Phone 3123321188
Add. Pltf. Atty. ________ Code ______

TO THE SHERIFF: SERVE THIS DEFENDANT AT:

NAME McEWEN LAW FIRM LTD.

ADDRESS 5850 Blackshire Path

CITY & STATE Inver Grove Heights, MN 5507

SUMMONS COPY

To the above named defendant(s).......:

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CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois) S.S.
County of St. Clair)

Case Number 17-L-250

Amount Claimed in excess of one million

Plaintiff(s)		Defendant(s)
JESSICA CASEY, MELODY EDWARDS and DEBBIE FOSTER, individually and on behalf themselves and all others similarly situated	VS	ROGER C. DENTON, SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, BURG SIMPSON, ELDRIDGE, HERSCH & JARDINE, P.C. MICHAEL A. LONDON, DOUGLAS & LONDON, P.C. MARK R. NIEMEYER, NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON PETERSON & ASSOCIATES, P.C, GREGORY McEWEN, and McEWEN LAW FIRM, LTD.

Classification Prefix ________ Code ________ Nature of Action ________ Code ________

Pltf. Atty. Kevin B. Rogers Code ______
Address 307 N. Michigan Ave Suite 305
City Chicago, IL 60601 Phone 3123321188
Add. Pltf. Atty. ________ Code ______

TO THE SHERIFF: SERVE THIS DEFENDANT AT:
NAME Roger C. Denton
SCHLICHTER, BOGARD & DENTON
ADDRESS 100 S. Fourth Street Suite 1200
CITY & STATE St. Louis, MO 63102

SUMMONS COPY

To the above named defendant(s)......:

[ ] A. You are hereby summoned and required to appear before this court at (court location) ________ at ________ M. On ________ 20___ to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint.

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Electronically Issued
Date 05/10/2017
Kahalah A. Clay
KAHALAH A. CLAY, Clerk
By HODGKINS, EMILY
Deputy Clerk
Trans ID : : 1716328703

WITNESS, ________ 20___

____
Clerk of Court

BY DEPUTY: ________

DATE OF SERVICE: ________ 20___
(To be inserted by officer on copy left with defendant or other person)

CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois) S.S.
County of St. Clair)

Case Number 17-L-250

Amount Claimed in excess of one million

JESSICA CASEY, MELODY EDWARDS and DEBBIE FOSTER, individually and on behalf themselves and all others similarly situated Plaintiff(s)	VS	ROGER C. DENTON, SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, BURG SIMPSON, ELDRIDGE, HERSCH & JARDINE,P.C. MICHAEL A. LONDON, DOUGLAS & LONDON,P.C. MARK R. NIEMEYER, NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON PETERSON & ASSOCIATES, P.C, GREGORY McEWEN, and McEWEN LAW FIRM, LTD. Defendant(s)

Classification Prefix ______ Code ______ Nature of Action ______ Code ______

Pltf. Atty. Kevin B. Rogers Code ______
Address 307 N. Michigan Ave Suite 305
City Chicago, IL 60601 Phone 3123321188
Add. Pltf. Atty. ______ Code ______

TO THE SHERIFF: SERVE THIS DEFENDANT AT:
NAME PETERSON & ASSOC. P.C.
Park Plaza Building
ADDRESS 801 W. 47th Street, Suite 107
CITY & STATE Kansas City, Mo 64112

SUMMONS COPY

To the above named defendant(s)......:

[ ] A. You are hereby summoned and required to appear before this court at (court location) ______ at ______ M. On ______ 20___ to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint.

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TO THE OFFICER:
This summons must be returned by the officer or other person to whom it was given for service, with indorsement thereon of service and fees if any, immediately after service. In the event that paragraph A of this summons is applicable this summons may not be served less than three days before the day of appearance. If service cannot be made, this summons shall be returned so indorsed.

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WITNESS, ______ 20___

______
Clerk of Court

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CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois)
County of St. Clair) S.S.

Case Number 17-L-250

Amount Claimed in excess of one million

JESSICA CASEY, MELODY EDWARDS and DEBBIE FOSTER, individually and on behalf themselves and all others similarly situated

Plaintiff(s)

VS

ROGER C. DENTON, SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, BURG SIMPSON, ELDRIDGE, HERSCH & JARDINE,P.C. MICHAEL A. LONDON, DOUGLAS & LONDON,P.C. MARK R. NIEMEYER, NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON PETERSON & ASSOCIATES, P.C, GREGORY McEWEN, and McEWEN LAW FIRM, LTD.

Defendant(s)

Classification Prefix ______ Code ______ Nature of Action ______ Code ______

Pltf. Atty. Kevin B. Rogers Code ______
Address 307 N. Michigan Ave Suite 305
City Chicago, IL 60601 Phone 3123321188
Add. Pltf. Atty. ______ Code ______

TO THE SHERIFF: SERVE THIS DEFENDANT AT:

NAME NIEMEYER, GREBEL & KRUSE, LLC

ADDRESS 10 S. Broadway, Suite 1125

CITY & STATE St. Louis, MO 63102

SUMMONS COPY

To the above named defendant(s). . . . . . :

[ ] A. You are hereby summoned and required to appear before this court at (court location) ______ at ______ M. On ______ 20___ to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint.

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CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois) S.S.
County of St. Clair)

Case Number 17-L-250

Amount Claimed in excess of one million

Plaintiff(s)		Defendant(s)
JESSICA CASEY, MELODY EDWARDS and DEBBIE FOSTER, individually and on behalf themselves and all others similarly situated	VS	ROGER C. DENTON, SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, BURG SIMPSON, ELDRIDGE, HERSCH & JARDINE,P.C. MICHAEL A. LONDON, DOUGLAS & LONDON,P.C. MARK R. NIEMEYER, NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON PETERSON & ASSOCIATES, P.C, GREGORY McEWEN, and McEWEN LAW FIRM, LTD.

Classification Prefix ______ Code ______ Nature of Action ______ Code ______

Pltf. Atty. Kevin B. Rogers Code ______
Address 307 N. Michigan Ave Suite 305
City Chicago, IL 60601 Phone 3123321188
Add. Pltf. Atty. ______ Code ______

TO THE SHERIFF: SERVE THIS DEFENDANT AT:
NAME: SCHLICHTER BOGARD & DENTON LLP
ADDRESS 100 S. Fourth Street, Suite 1200
CITY & STATE St. Louis, MO 63102

SUMMONS COPY

To the above named defendant(s)........:

[ ] A. You are hereby summoned and required to appear before this court at (court location) ______ at ______ M. On ______ 20___ to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint.

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CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois)
County of St. Clair) S.S.

Case Number 17-L-250

Amount Claimed in excess of one million

JESSICA CASEY, MELODY EDWARDS and DEBBIE FOSTER, individually and on behalf themselves and all others similarly situated

Plaintiff(s)

VS

ROGER C. DENTON, SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, BURG SIMPSON, ELDRIDGE, HERSCH & JARDINE,P.C. MICHAEL A. LONDON, DOUGLAS & LONDON,P.C. MARK R. NIEMEYER, NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON PETERSON & ASSOCIATES, P.C, GREGORY McEWEN, and McEWEN LAW FIRM, LTD.

Defendant(s)

Classification Prefix ______ Code ______ Nature of Action ______ Code ______

Pltf. Atty. Kevin B. Rogers Code ______
Address 307 N. Michigan Ave Suite 305
City Chicago, IL 60601 Phone 3123321188
Add. Pltf. Atty. ______ Code ______

TO THE SHERIFF: SERVE THIS DEFENDANT AT:
NAME BURG SIMPSON ELDREDGE HERSH & JARDIN
ADDRESS 40 Inverness Drive East
CITY & STATE Englewood, CO 80112

SUMMONS COPY

To the above named defendant(s)......:

[ ] A. You are hereby summoned and required to appear before this court at (court location) ______ at ______ M. On ______ 20___ to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint.

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Clerk of Court

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STATE OF ILLINOIS)
) SS
COUNTY OF ST CLAIR)

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST CLAIR COUNTY, ILLINOIS

Kahalah A. Clay
Electronically Filed
Transaction Id : 1716328914
2017L000250
FILEDATE : 05/11/2017
HODGKINS,EMILY

JESSICA CASEY, MELODY EDWARDS, and DEBBIE FOSTER, individually, and, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

ROGER C. DENTON, individually; SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, individually; BURG, SIMPSON, ELDREDGE, HERSH & JARDINE, P.C.; MICHAEL A. LONDON, individually; DOUGLAS & LONDON, P.C.; MARK R. NIEMEYER, individually; NIEMEYER, GREBEL & KRUSE, L.L.C.; DANIEL P. MASSEY, individually; DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON; PETERSON & ASSOCIATES, P.C.; GREGORY McEWEN, individually; and McEWEN LAW FIRM, LTD.

Defendants.

NO. 2017 L 250

CLASS ACTION

JURY DEMAND

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION[1]

---

[1] Plaintiffs are presently filing this motion to proactively avoid mootness of the class claims in the event of a tender in light of the Illinois Supreme Court's decisions in ***Wheatley v. Board of Education of Township High School District 205***, 99 Ill. 2d 481, 485 (1984) (holding, in a case where a class of teachers sued the school board that had dismissed them, that the named plaintiffs' claims were mooted when they *accepted* the school board's offer of reemploy-ment) and ***Barber v. American Airlines, Inc.***, 241 Ill. 2d 450, 453, 457 (2011) (holding that a defendant airline's offer to refund the $40 checked baggage fee that comprised a consumer plaintiff's only alleged damages mooted the plaintiff's claims, *even where the offer was rejected by the plaintiff's counsel*).

In ***Barber***, the Illinois Supreme Court held that "the important consideration in determin-ing whether a named representative's claim is moot is whether that representative filed a motion for class certification prior to the time when the defendant made its tender." ***Barber***, 241 Ill. 2d at

NOW COME the Plaintiffs, Jessica Casey, Melody Edwards and Debbie Foster, individually and on behalf of all others similarly situated, by and through their attorney, Kevin Rogers pursuant to 735 ILCS 5/2-801 of the Illinois Code of Civil Procedure, move this Honorable Court to enter an order certifying the Class against the Defendants Roger C. Denton, Michael S. Burg, Michael A. London, Mark R. Niemeyer, Daniel P. Massey, David M. Peterson, and Gregory McEwen, and, in support thereof, states as follows:

INTRODUCTION

This is a legal malpractice class action brought by named Plaintiffs, Jessica Casey, Melody Edwards and Debbie Foster individually, and on behalf of those similarly situated who were represented Plaintiffs and Clients of the named individual Defendants in an underlying cause of action; ***In Re: Yasmin and Yaz (drospirenone) Marketing, Sales Practices and Products Liability Litigation***, 3:09-md-02100-DRH-CJP, ("MDL") which arose from their use and ingestion of a prescribed contraceptive medication entitled; Yaz®/Yasmin®, Ocella and Gianci (hereinafter, and collectively, "Yaz") which was brought against the manufacturer

---

456. "Where the named representative has done so, and the motion is thus pending at the time the tender is made, the case is not moot, and the circuit court should hear and decide the motion for class certification before deciding whether the case is mooted by the tender." ***Id.*** at 456–57. However, where, as here, the offer was made before a motion for class certification was filed, "the interests of the other class members are not before the court [citation] and the case may properly be dismissed." ***Id.*** at 457.

The afore authority underscores the Plaintiffs' concerns that such an approach would provoke Plaintiffs to move for class certification prematurely, before they have fully developed or discovered the facts necessary to obtain certification. Plaintiff seeks to preclude any "buy-off" issues, until the parties can fully develop the facts needed for certification, and, pray that this Court delay its ruling and provide time for additional discovery or investigation. This procedure comports with Illinois Code of Civil Procedure 735 ILCS 5/802(a) & (b), which permits this court to make such conditional rulings as it deems necessary which may include waiting until an early practicable time before ruling on a motion to certify a class.

Defendant Bayer Healthcare Pharmaceuticals, Inc., ("Bayer").

The legal malpractice alleged occurred when the Defendants failed to respond to a motion to dismiss as mandated by a order of the federal district court. As a result of their failures to act and ministerial omissions, the pending cases of the Plaintiffs and the putative class were dismissed with prejudice on January 7, 2016; docketed January 11, 2016. See, Dismissal Order, Pl Ex 1.

The Provisional Class is defined as follows:

> All individuals who were prescribed, obtained and consumed Bayer-manufactured Yaz and/or its generic, Bayer-manufactured counterparts from January 1, 1999 up to and including the present and whose cases against Bayer were dismissed with prejudice in the U.S. District Court by its order of January 7, 2016 (docketed January 11, 2016) for failure to comply with that Court's standing Case Management Order No. 79 because the Defendants Roger C. Denton, Michael S. Burg, Michael A. London, Mark R. Niemeyer, Daniel P. Massey, David M. Peterson, and Gregory McEwen breached the standard of care and their duties owed the named Plaintiffs and the Class resulting in their being damaged. Plaintiffs Jessica Casey, Melody Edwards and Debbie Foster are members and representatives of the class in that they were prescribed, obtained and consumed Yaz and/or its generic Bayer-manufactured counter-part for their personal use within the class period and, as a result, suffered injury, damages and future injury as a consequence of said use. Plaintiffs' lawsuits were dismissed with prejudice because the above named Defendants' negligence resulting in their being damaged by their lost opportunity to be made whole.

BACKGROUND

Plaintiffs have filed a one count class action complaint in which the Class seeks relief for the professional negligence of the Defendants.

Plaintiffs and the Class seek damages, pre-judgment interest, and equitable relief (if available) and costs.

FACTS RELEVANT TO CLASS CERTIFICATION

Named Plaintiffs brought their respective underlying cases against Defendants for damages associated with their ingestion of the pharmaceutical drugs Yaz (ethinyl estradiol and ***drospirenone***), an oral contraceptive designed, manufactured, marketed, and distributed by Defendants. The respective causes of the named Plaintiffs were: ***Jessica Casey v Bayer Health-care Pharmaceuticals, Inc., et al***, 3:14-cv-10387-DRH-PMF; ***Melody Edwards v. Bayer Corp-oration, Inc., et al***, 3:12-cv-11370-DRH-PMF; and, ***Debbie Foster v Bayer Healthcare Pharma-ceuticals, Inc., et al,*** 3:14-cv-10003-DRH-PMF. The afore were three of thousands of suits consolidated for pretrial proceedings in the MDL as part of multidistrict litigation in the Southern District of Illinois[2].

The Complaint alleges the following: Jessica Casey was originally represented by the Defendant Daniel P. Massey of the Daniel Massey Law Firm, P.C. Melody Edwards was originally represented by the Defendants David M. Peterson of Peterson & Associates, P.C. Debbie Foster was represented by the Defendant Gregory McEwen of the Defendant McEwen Law Firm, Ltd. See Class Action Complaint, ("Cmp"); Para Nos. 50 - 52. Pl Ex 2.

Theirs and the putative classes respective underlying causes of action were thereafter transferred to the United States District Court for the Southern District of Illinois by the Judicial Panel on Multidistrict Litigation and captioned: ***In Re: Yasmin and Yaz (drospirenone) Market-***

---

[2] A Court can take judicial notice of pleadings and other documents filed in other actions. *See*, ***Kirchner v Greene***, 294 Ill.App3d 672 (1st Dist. 1998); also, ***Fox v. Fox***, 9 Ill.2d 509 (1956). Further, a Court may take judicial notice of the on-line docket report of division filings issued by the clerk of a circuit court. See, e.g., ***All Purpose Nursing Service v. Human Rights Comm'n***, 205 Ill.App.3d 816, 823 (1990) (citing, ***People v. Davis***, 65 Ill.2d 157 (1976)); ***Boston v. Rockford Memorial Hospital***, 140 Ill.App.3d 969, 972 (1986). The docket report is a matter of record which this court may take judicial notice, and its contents are not difficult to ascertain.

ing, Sales Practices and Products Liability Litigation, 3:09-md-02100-DRH-CJP. ***Id***, at 53.

On or about November 10, 2009, responsive to a Plaintiffs' motion for class leadership, the MDL Court issued Order No. 2: Order Appointing Plaintiffs' Steering Committee and Interim Class Counsel, ("Order No. 2"), naming Roger Denton as Liaison counsel, and, Michael S. Burg, Michael A. London and Mark R. Niemeyer as interim lead counsel. ***Id***, at 53; Denton, Burg, London and Niemeyer were also designated members of the Plaintiffs' Steering Committee, ("PSC"). ***Id***, at 53; See also, Order Appointing Plaintiffs' Steering Committee and Interim Class Counsel, ("Order No. 2"), Pl Ex 3.

MDL Order No. 2, directed that Denton, Burg, London and Niemeyer were to "[s]ubmit and argue all verbal or written motions presented to the Court or Magistrate on behalf of the PSC as well as oppose when necessary any motions submitted by defendants or other parties which involve matters within the sphere of the responsibilities of the PSC." ***Cmp*** at 54 - 56; See also, Pl Ex 2.

By their appointment as Liaison and/or Class Counsel, Denton, Burg, London and Niemeyer were reposed by the Court and applicable statutes with duties to the putative class members of trust, confidence and loyalty. In addition, Rule 23 of the Federal Rules Of Civil Procedure imposed upon Liaison and/or Class Counsel, Denton, Burg, London and Niemeyer that they must fairly and adequately represent the interests of the Class. ***Cmp*** at 57 - 58. Attorneys Denton, Burg, London and Niemeyer were fiduciaries to the putative class. ***Id*** at 59.

Liaison and/or Class Counsel associated with the individual attorneys including; Defendant Daniel P. Massey of the Daniel Massey Law Firm, P.C., the Defendants David M. Peterson of Peterson & Associates, P.C. and Defendant Gregory McEwen of the Defendant McEwen Law

Firm, Ltd. to pursue the prosecution of the Class' claims to make Plaintiffs and the Class whole as well as seek a personal award of attorneys fees and costs thus exhibiting and manifesting a community of interest. ***Id*** at 60. In addition, Order No. 2 authorized control and management by Denton, Burg, London and Niemeyer over the class, the individual cases and individual counsel. ***Id*** at 60; see also, Pl Ex 3.

Liaison and/or Class Counsel and, the individual class attorneys had a proprietary interest in the MDL by advancing and incurring costs and expenses, associated with the individual class attorneys and worked jointly and severally to obtain a resolution for the Plaintiffs to the class claims. ***Cmp*** at 62 - 63. Liaison and/or Class Counsel and, the individual class attorneys maintained the right to control the prosecution of the named class Plaintiff's cases. ***Id*** at 64.

Liaison and/or Class Counsel and, the individual class attorneys kept and ultimately would and/or did submit time and task for an award of attorneys fees at the conclusion of all phases of the case. If unsuccessful they would jointly and severally bear any losses in the area of costs advanced in prosecution of the litigation. Liaison and/or Class Counsel and, the individual class attorneys were thus joint venturers. ***Id*** at 65 - 67.

Many of the MDL cases settled, however, unsettled cases became subject to an order of the MDL in August of 2015; Case Management Order No. 79. ("CMO 79"), Pl Ex 4, creating two "tracks" for purposes of resolving the remaining cases. ***Id*** at 68 - 69. See also, ***Dzik v. Bayer Corp., et al***, 846 F3d 211, 215 (7th Cir. 2017)[3]. Pl Ex 5. The tracks set out methods for resolving cases opting for settlement and providing for settlement negotiations (Section II) and other cases that were required discovery and expert reports in ostensible preparation for trial (Section III). ***Cmp*** at 68 - 70; see also, ***Dzik*** at 215; Pl Ex 5.

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[3] ***Dzik*** was an appeal of one of the putative class cases that had been dismissed like the within. The negligence alleged is identical. The Seventh Circuit's application of the governance of Case Management Order No. 79 is indeed identical.

Pursuant to CMO 79 each Plaintiff had 14 days to file an opposition to the Bayer Defendants' motions to dismiss. ***Cmp*** at 73; also, CMO 79, Pl Ex 4. CMO 79 further provided that failure to timely file a response in opposition "will result in an automatic dismissal with prejudice." ***Id*** at 74. Liaison and/or Class Counsel and, the individual class attorneys failed to file responses in opposition to the Bayer Defendants' motion to dismiss forty-four (44) cases. ***Id*** at 74; see also; Order Granting With Prejudice Dismissal Pursuant To CMO 79 (44 cases). Pl Ex 1.

Since Liaison and/or Class Counsel and, the individual class attorneys failed to oppose the afore motion, January 7, 2016 (docketed January 11, 2016), the Honorable Judge David R. Herndon ordered that the Plaintiffs and forty-one other putative class members' cases be dismissed with prejudice. Pl Ex. 1.

DISCUSSION

The decision regarding class certification is within the discretion of the circuit court and will not be disturbed on appeal unless the circuit court abused its discretion or applied impermissible legal criteria. ***Bueker v Madison County***, 2016 IL App (5th) 150282 (2016); citing, ***Smith v. Illinois Central R.R. Co.***, 223 Ill.2d 441, 447, 307 Ill.Dec. 678, 860 N.E.2d 332 (2006). In making its decision as to whether to certify a class, the court may consider any matters of fact or law properly presented by the record, which includes the pleadings, depositions, affidavits, answers to interrogatories, and any evidence that may have been adduced at the hearings. ***Gordon v. Boden***, 224 Ill.App.3d 195, 199, 166 Ill.Dec. 503, 586 N.E.2d 461 (1991).

A plaintiff seeking class certification has the burden of proving that the proposed class meets the requirements of section 2–801 of the Illinois Code of Civil Procedure ("Code").

Section 801 sets forth four prerequisites for maintaining a class action: the class is so numerous that joinder of all members is impracticable; there are questions of fact or law common to the class that predominate over any questions affecting only individual members; the representative parties will fairly and adequately protect the interest of the class; and the class action is an appropriate method for the fair and efficient adjudication of the controversy. 735 ILCS 5/2–801 (West 2012). The party seeking class certification has the burden of establishing the above statutory prerequisites. ***Wheatley v. Board of Education of Township High School District 205,*** 99 Ill.2d 481, 486, 77 Ill.Dec. 115, 459 N.E.2d 1364 (1984). The circuit court must find that the four prerequisites are present before it can certify the class. ***Id.***

A. Numerosity

The exact number of Class members is known to Plaintiffs as it is set out in the MDL Court's order of January 7, 2016 (docketed; January 11, 2016) Pl Ex 1. As a general rule, numerosity is satisfied with forty people. See ***Wood River Area Development Corp. v. Germania Federal Sav. and Loan Assoc***. 198 Ill.App.3d 445, 555 N.E.2d 1150, 144 Ill.Dec. 631(1990); citing, ***Miller, An Overview of Federal Class Actions: Past, Present, and Future, Federal Judicial Center***, at 22 (1977).

The Court's order of January 7, 2016 sets out the exact number of putative Plaintiffs exceeding the forty benchmark. The presumption of class treatment is thus met. Furthermore, ascertainability of the Plaintiffs locations for purposes of notice and possibly distribution are ostensibly in the custody and control of the Defendants. The numerosity factor is satisfied.

B. Commonality / Predominance

The second prong of the section 2–801(2) analysis is commonality, which requires questions of law or fact common to the class. The statutory requirement is met where (1) there are questions of fact or law common to the class and (2) these common questions predominate over questions affecting only individual members of the class. ***Hall v. Sprint Spectrum, L.P.***, 376 Ill.App.3d 822, 831, 315 Ill.Dec. 446, 876 N.E.2d 1036 (2007). "Determining whether issues common to the class predominate over individual issues requires the court to identify the substantive issues that will control the outcome, assess which issues will predominate, and then determine whether these issues are common to the class." ***Smith,*** 223 Ill.2d at 449, 307 Ill.Dec. 678, 860 N.E.2d 332. This inquiry requires the court to look beyond the pleadings to understand the claims, defenses, relevant facts, and applicable substantive law. ***Id.***

The predominance test is "not whether the common issues outnumber the individual ones, but whether common or individual issues will be the object of most of the efforts of the litigants and the court." ***Id.*** at 448–49, 307 Ill.Dec. 678, 860 N.E.2d 332. To satisfy this requirement, the plaintiff must establish that the successful adjudication of the plaintiff's individual claims will establish a right of recovery in favor of the other class members. ***Hall,*** 376 Ill.App.3d at 831, 315 Ill.Dec. 446, 876 N.E.2d 1036. Where the circuit court concludes that common questions of fact or law predominate over the individual issues, the existence of questions that apply only to individual class members will not defeat the predominating common question. ***S37 Management, Inc. v. Advance Refrigeration Co.***, 2011 IL App (1st) 102496, ¶ 17, 356 Ill.Dec. 172, 961 N.E.2d 6.

A common issue may be shown where the claims of the individual class members are based upon the common application of a statute or where the proposed class members are aggrieved by the same or similar conduct or a pattern of conduct. ***Clark v. TAP Pharmaceutical Products, Inc.***, 343 Ill.App.3d 538, 548, 278 Ill.Dec. 276, 798 N.E.2d 123 (2003).

The Plaintiffs and putative Class' complaint is based upon allegations of professional negligence that applies to all of the Defendants. The failure to act and omission of failing to file a responsive pleading to the Bayer motion to dismiss and the consequential dismissal of their respective causes are all identical.

Notwithstanding the Defendants sought class treatment of the underlying MDL that was dismissed. Ostensibly, there was commonality and predominance in the underlying cases by the underlying Defendant's acts and conduct according to the pleadings put forth by them.

Common legal and factual questions that will drive the resolution of the litigation include, but are not limited to:

1. Underlying Cause

a) whether Yaz causes arrhythmia, cardiac arrest/heart attack, intracardiac thrombus, pulmonary embolism, stroke or other cardiovascular complications in women in their child bearing years that consumed Yaz;

b) whether Bayer markets and misrepresents Yaz as a safe product, fit for human consumption;

c) whether Bayer failed to adequately disclose to consumers that the use of Yaz substantially increases the risks of arrhythmia, cardiac arrest/heart attack, intracardiac thrombus, pulmonary embolism, stroke or other cardiovascular complications;

d) whether Bayer's failure to disclose the dangers of Yaz is a material omission of fact;

e) whether Bayer engaged in a marketing practice intended to conceal the dangers of Yaz;

f) whether Bayer's sales and marketing practices constitutes strict products liability; defective manufacturing;

g) whether Bayer's sales and marketing practices constitutes strict products liability; design defect;

h) whether Bayer's sales and marketing practices violates product liability; defect due to inadequate warning;

i) whether Bayer's sales and marketing practices constitutes negligence;

j) whether Bayer's sales and marketing practices constitutes fraud; and,

k) whether Bayer's sales and marketing practices breaches express warranties of the product;

l) whether Bayer's sales and marketing practices breaches implied warranties of the product;

m) whether Bayer's sales and marketing practices violated the Plaintiff's applicable state consumer fraud and deceptive practices acts; and,

n) whether Bayer should be barred from marketing Yaz in a deceptive and uniform manner;

2. Within Cause

o) whether there existed an attorney-client relationship between Plaintiffs and the Class and, the Defendants, and each of them.

p) whether the Defendants, owed a duty to the Plaintiffs and the Class;

q) whether the Defendants, and each of them, breached their duty and the applicable standards of care by failing to abide by an order of court that resulted in the Plaintiffs and the Class' cases being dismissed;

r) were the Plaintiffs and the Class damaged a result of the failures to act and omissions of the Defendants;

s) were the Defendants failures to act and omissions the proximate cause of the Plaintiffs and the Class' damages;

Cmp at 29; a) - s)

Because there is a common nucleus of operative facts and legal issues, Plaintiffs satisfy the commonality requirement of 2-801(2).

2-801(2)'s predominance requirement is met because in this case common questions predominate for the Classes because the Defendants' conduct is identical with regard to all putative class members. Thus, the predominance question is satisfied because liability will be decided predominantly, if not entirely, based on the common evidence of the Defendants' conduct.

C. Fair And Adequate Protection Of The Interests Of The Class

The representative parties Jessica Casey, Melody Edwards and Debbie Foster, individually and on behalf of all others similarly situated, and, their attorney, Kevin Rogers, will fairly and adequately protect the interests of the class.

The 2-801(3) prerequisite requires the proposed class representative fairly and adequately protect the interests of the class. 735 ILCS 5/2-801(3). The purpose behind the adequate-representation requirement is to ensure that all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim. ***Hall,*** 376 Ill.App.3d at 832, 315 Ill.Dec. 446, 876 N.E.2d 1036. The test applied to determine adequacy of representation is whether the interests of those who are not parties are the same as those who are not joined and whether the litigating parties fairly represent those not joined. ***Id.*** The proposed class action plaintiff must be a member of the proposed class, *i.e.*, must be able to maintain an individual cause of action against the defendant. ***Ramirez v. Smart Corp.***, 371 Ill.App.3d 797, 810, 309 Ill. Dec. 168, 863 N.E.2d 800 (2007).

A representative will not be disqualified merely because his claim is not exactly the same as the other members of the class. ***Purcell & Wardrope Chartered,*** 175 Ill.App.3d at 1078, 125

Ill.Dec. 585, 530 N.E.2d 994. "It is only necessary that the representative not seek relief antagonistic to the interests of other potential class members." *Id.* The named representatives' interests must not appear collusive. ***P.J.'s Concrete Pumping Service, Inc. v. Nextel West Corp.***, 345 Ill.App.3d 992, 1004, 281 Ill.Dec. 399, 803 N.E.2d 1020 (2004). Moreover, the class attorney for the representative party must be qualified, experienced, and generally able to conduct the proposed litigation. ***Miner v. Gillette Co.***, 87 Ill.2d 7, 14, 56 Ill.Dec. 886, 428 N.E.2d 478 (1981).

Named Plaintiffs Jessica Casey, Melody Edwards and Debbie Foster have the same interests as the proposed Class; these Plaintiffs as well as the putative class members in the underlying MDL maintained causes of action for their use and ingestion of prescribed birth control pills; i.e., Yaz and/or its generic Bayer manufactured counterparts from January 1, 1999 up to and including the present and, who filed lawsuits that were consolidated in an MDL. Indeed, the very Defendants in this cause sought class treatment for the Yaz plaintiffs which included Jessica Casey, Melody Edwards and Debbie Foster and forty-one others.

Notwithstanding, the named Plaintiffs and the putative class, forty-one (41) more in all, had their cases involuntarily dismissed with prejudice due to the failures to act and omissions of the Defendants more specifically set out in CMO 79. There is no antagonism in the interests of the named Plaintiffs with the interests of other potential class members. Nor is there a scintilla of evidence that these parties are in collusion with other named representatives', any putative class member or representative counsel.

In addition, class counsel for the representative parties, Kevin Rogers is qualified, experienced, and generally able to conduct the proposed litigation. Rogers has regularly engaged in major complex litigation and class actions[4], and, has no known or believed potential conflicts with any party. More specifically, he ensures vigorous advocacy of the Class' claims.

D. Appropriate Method For The Adjudication Of The Controversy

735 ILCS 5/2-801(4) requires a showing that the class action is an appropriate method for the fair and efficient adjudication of the controversy. In determining whether this requirement has been met, a court considers whether a class action can best secure the economies of time, effort, and expense and promote uniformity or whether a class action can accomplish the other ends of equity and justice that class actions seek to obtain. ***Gordon***, 224 Ill.App.3d at 203, 166 Ill.Dec. 503, 586 N.E.2d 461.

Class certification for the purpose of liability is an appropriate method for fairly and efficiently adjudicating the liability issue. Where the first three prerequisites for the maintenance of a class action are established, it is evident that the fourth requirement has been fulfilled as well. See ***Hall***, 376 Ill.App.3d at 833–34, 315 Ill.Dec. 446, 876 N.E.2d 1036. With the first three prerequisites having been met with regard to a class certified for liability purposes, a Court may consider the fourth requirement fulfilled. See ***Bueker***, 2016 IL App (5th) 150282 ¶ 48, (2016).

The within class action is superior to other available methods for the fair and efficient adjudication of Plaintiffs' and the Class' claims. The burden and expense of individual prosecution of the litigation necessitated by the Defendants' actions make a class action superior to other available methods of resolution.

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[4] Proposed Class Counsel will submit a current curriculum vitae upon this Court's request.

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CONCLUSION

For reasons set out herein above, and, which will be borne out in class discovery, this case is appropriate for provisional class certification. Plaintiffs hereby request that this Honorable Court allow for and schedule discovery to take place on class-wide issues, at the conclusion of which, Plaintiffs will file a memorandum in support of this motion detailing the appropriateness of class certification and asking the Court to rule on this motion at that time.[5]

WHEREFORE, Plaintiffs and the Class pray this Honorable Court rule as follows:

A. Enter an order reserving ruling on Plaintiff's motion for provisional class certification;

B. Allow for and schedule discovery to take place on class-wide issues;

C. Grant Plaintiffs leave to file a memorandum of law in support of the within motion for class certification upon the conclusion of class-wide discovery; and,

D. Grant the Plaintiff's Motion For Class Certification after full briefing on the issues presented herein.

Dated: May 11, 2017

Respectfully submitted:

s/ Kevin Rogers
Attorney for the Plaintiffs and the Proposed Class

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307 N. Michigan Avenue, Suite 305
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[5] Plaintiffs reserve the right to amend class definitions at the conclusion of class-wide discovery.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: YASMIN AND YAZ (DROSPIRENONE) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	**3:09-md-02100-DRH-PMF** **MDL No. 2100**

This Document Relates to:

Jessica Casey v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:14-cv-10387-DRH-PMF
Laura Cassil v. Bayer Corporation, et al.	No. 3:14-cv-10043-DRH-PMF
Hannah N. Cavaness v. Bayer Corporation, et al.	No. 3:12-cv-10902-DRH-PMF
Halle Chookazian v. Bayer Corporation, et al.	No. 3:10-cv-12443-DRH-PMF
Tiffany Clay v. Bayer Corporation, et al.	No. 3:15-yz-00378-DRH-PMF
Jessica Coker v. Bayer Corporation, et al.	No. 3:09-cv-10135-DRH-PMF
Rachael Coletti v. Bayer Corporation, et al.	No. 3:11-cv-13220-DRH-PMF
Kristina Collier-Foster, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:11-cv-12166-DRH-PMF
Sandra Ivonne Inchauste Comboni v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:14-cv-10273-DRH-PMF
Danielle Cooling v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:13-cv-10826-DRH-PMF
Monique Corley v. Bayer Corporation, et al.	No. 3:10-cv-12752-DRH-PMF
Jennifer Cowden v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:11-cv-12726-DRH-PMF
Stacy Cozart v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:11-cv-12707-DRH-PMF
Vernita Crowder v. Bayer Corporation, et al.	No. 3:12-cv-10506-DRH-PMF

Janae Curtain v. Bayer Corporation, et al.	No. 3:14-cv-10074-DRH-PMF
Cathryn Danahey, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:12-cv-11324-DRH-PMF
Erica Davis v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:14-cv-10099-DRH-PMF
Khaneesha Davis v. Bayer Corporation, et al.	No. 3:10-cv-10096-DRH-PMF
Holly Marie Demro v. Bayer Corporation, et al.	No. 3:12-cv-11212-DRH-PMF
Rhonda Dillon, et al. v. Bayer Corporation, et al.	No. 3:14-cv-10319-DRH-PMF
Katherine Duerr v. Bayer Corporation, et al.	No. 3:11-cv-13212-DRH-PMF
Jennifer Dzik, et al. v. Bayer Corporation, et al.	No. 3:10-cv-20389-DRH-PMF
Melody Edwards v. Bayer Corporation, et al.	No. 3:12-cv-11370-DRH-PMF
Ruby Edwards v. Bayer Corporation, et al.	No. 3:09-cv-10089-DRH-PMF
Julie Duke Endsley v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:11-cv-13189-DRH-PMF
Jennifer Farnsworth v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:11-cv-13553-DRH-PMF
Terra Ferguson, individually and as administrator ad prosequendum of decedent Brittany Nichole Johnson v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:10-cv-10943-DRH-PMF
Annie Fleischer v. Bayer Corporation, et al.	No. 3:15-cv-20001-DRH-PMF
Erin E. Fletcher v. Bayer Corporation, et al.	No. 3:14-cv-10385-DRH-PMF
Debbie Foster v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:14-cv-10003-DRH-PMF
Kimberly Frydrych v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:11-cv-12551-DRH-PMF

Gail Gannon v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:13-cv-10143-DRH-PMF
Heather L. Garrison, et al. v. Bayer Corporation, et al.	No. 3:12-cv-10689-DRH-PMF
Michelle Gauthier v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:12-cv-11645-DRH-PMF
Erika Geer v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:14-cv-10007-DRH-PMF
Carrie Gerling v. Bayer Corporation, et al.	No. 3:09-cv-10026-DRH-PMF
Nicole M. Giulitto, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:10-cv-13794-DRH-PMF
Carrie Glass v. McKesson Corporation, et al.	No. 3:10-cv-20392-DRH-PMF
Julia Gonzales v. Bayer Corporation, et al.	No. 3:10-cv-20024-DRH-PMF
Tiffany Goodman v. Bayer Corporation, et al.	No. 3:11-cv-20140-DRH-PMF
Crow Grando v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:12-cv-11625-DRH-PMF
Jennifer M. Green v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:14-cv-10389-DRH-PMF
April Grimm, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:13-cv-20014-DRH-PMF
Victoria Guerra v. Bayer HealthCare Pharmaceuticals Inc., et al.	No. 3:11-cv-12564-DRH-PMF

ORDER GRANTING WITH PREJUDICE DISMISSAL PURSUANT TO CMO 79

On December 18, 2015, the Bayer Defendants moved to dismiss the claims of plaintiffs in the above captioned matters, with prejudice, pursuant to Section III of Case Management Order 79 ("CMO 79"). Pursuant to CMO 79, each plaintiff had 14 days to file an opposition to the Bayer Defendants' motions to dismiss. Case Management Order 79 further provides that failure to timely file an opposition "will result in an automatic dismissal with prejudice." CMO 79 § III ¶ 5(b). The above captioned plaintiffs failed to file an opposition to the Bayer Defendants' motions to dismiss. Accordingly, these actions are subject to automatic dismissal with prejudice.

The Court therefore **GRANTS** the motions to dismiss the claims of the plaintiffs in the above captioned matters. The claims of the above captioned plaintiffs are **DISMISSED WITH PREJUDICE**. **FURTHER, the Court DIRECTS the Clerk to enter judgment in each of the above captioned actions.**

IT IS SO ORDERED.

Signed this 7th day of January, 2016.

Digitally signed by Judge David R. Herndon
Date: 2016.01.07 21:33:02 -06'00'

United States District Judge

STATE OF ILLINOIS)
) SS
COUNTY OF ST CLAIR)

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST CLAIR COUNTY, ILLINOIS

JESSICA CASEY, MELODY EDWARDS, and DEBBIE FOSTER, individually, and, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

NO. 17-L-250

ROGER C. DENTON, individually; SCHLICHTER, BOGARD & DENTON, L.L.P.; MICHAEL S. BURG, individually; BURG, SIMPSON, ELDREDGE, HERSH & JARDINE, P.C.; MICHAEL A. LONDON, individually; DOUGLAS & LONDON, P.C.; MARK R. NIEMEYER, individually; NIEMEYER, GREBEL & KRUSE, LLC.; DANIEL P. MASSEY, individually; DANIEL MASSEY LAW FIRM, P.C.; DAVID M. PETERSON, individually; PETERSON & ASSOCIATES, P.C.; GREGORY McEWEN, individually; and McEWEN LAW FIRM, LTD.

Defendants.

Kahalah A. Clay
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FILEDATE : 05/08/2017
HODGKINS,EMILY

CLASS ACTION COMPLAINT

Plaintiffs, Jessica Casey, Melody Edwards and Debbie Foster, individually and on behalf of all others similarly situated, by and through their attorney, Kevin Rogers, complain as follows:

NATURE OF ACTION

1. This is a class action brought by Jessica Casey, Melody Edwards and Debbie

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Foster, individually, and on behalf of all others similarly situated, against the above named Defendants under Illinois common law for legal malpractice in that they allowed their cases along with others of the putative class to be dismissed with prejudice by not complying with an order of court.

2. Plaintiffs' underlying cause of action arose from their use and ingestion of a prescribed contraceptive medication entitled; Yaz®/Yasmin®, Ocella and Gianci (hereinafter, and collectively, "Yaz") which was brought against the manufacturer Defendant Bayer Healthcare Pharmaceuticals, Inc., ("Bayer").

3. Underlying Plaintiffs alleged that Bayer, through a standardized advertising, promotional, and marketing campaign hatched, incubated, facilitated, and consummated by them in a uniform manner, engaged in unfair and deceptive marketing by purposefully misrepresenting, concealing, and omitting the fact that the consumption of Yaz by a consumer would substantially and/or exponentially increase the consumer's risk of having a thrombosis, heart attack, stroke, or other cardiovascular complications. It was alleged that Bayer had purposefully hidden this fact from consumers.

4. Bayer, it was alleged, omitted the afore disclosures in order to sell Yaz to consumers under false pretenses, and to sell millions of dollars worth of Yaz worldwide which it would not have otherwise sold had it made the proper disclosures, and, it has violated respective consumer fraud statutes, were strictly liable in tort for manufacturing and distributing this product, ineffectively warned consumers of the products dangers, and, that their conduct was otherwise negligent and/or fraudulent against Plaintiffs and the class members.

5. The legal malpractice here alleged occurred when the Defendants failed to

respond to a motion to dismiss as mandated by a order of the federal district court. As a result of their failures to act and omissions, the pending cases of the putative class were dismissed with prejudice on January 7, 2016; docketed January 11, 2016.

6. Plaintiffs bring this case on behalf of themselves and a class of clients of the named Defendants; (the "Class").

JURISDICTION AND VENUE

7. Venue. This court has jurisdiction over this litigation under Illinois Code of Civil Procedure, 735 ILCS 5/2-101 (the County in which the transaction or some part thereof occurred out of which the cause of action arose).

8. Jurisdiction. Jurisdiction of this Court arises under 735 ILCS 5/2-209(a)(1) (for transacting business within the State), 735 ILCS 5/2-209(a)(2) (commission of a tortious act within the State), and, 735 ILCS 5/2-209(a)(11) (for the breach of any fiduciary duty within this State).

PARTIES

9. Plaintiff and proposed class representative Jessica Casey, is and was at all times relevant a citizen and resident of the County of Hardin in the State of Kentucky.

10. Plaintiff and proposed class representative Melody Edwards, is and was at all times relevant, a citizen and resident of the County of Johnson in the State of Kansas.

11. Plaintiff and proposed class representative Debbie Foster, is and was at all times relevant, a citizen and resident of the County of Kershaw in the State of South Carolina.

12. Defendant, Roger C. Denton, ("Denton"), is a citizen and resident of the County of St. Louis in the State of Missouri. He was a court designated liaison counsel in ***In Re: Yasmin and Yaz (drospirenone) Marketing, Sales Practices and Products Liability Litigation,*** 3:09-md-02100-DRH-CJP, ("**MDL**"). He is here sued in his individual capacity.

13. Defendant Schlichter, Bogard & Denton, LLP, ("Schlichter Bogard") is a limited liability partnership duly organized under the laws of the State of Missouri and, whose principal place of business is in St. Louis, Missouri. Schlichter Bogard at all times relevant was the employer of Roger C. Denton and is here sued on a theory of *respondeat superior*.

14. Defendant Michael S. Burg, ("Burg"), is a citizen and resident of the County of Arapahoe in the State of Colorado. He was a court designated lead counsel in the **MDL**. He is here sued in his individual capacity.

15. Defendant Burg, Simpson, Eldredge, Hersh & Jardine, P.C., ("Burg Simpson") is a professional corporation duly organized under the laws of the State of Colorado and, whose principal place of business is in Englewood, Colorado. Burg Simpson was at all times relevant the employer of Michael S. Burg and is here sued on a theory of *respondeat superior*.

16. Defendant Michael A. London, ("London"), is a citizen and resident of the County of New York in the State of New York. He was a court designated lead counsel in the **MDL**. He is here sued in his individual capacity.

17. Defendant Douglas & London, P.C. is a professional corporation duly organized under the laws of the State of New York and, whose principal place of business is in New York, New York. Douglas & London was at all times relevant the employer of Michael A. London and is here sued on a theory of *respondeat superior*.

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18. Defendant Mark R. Niemeyer, ("Niemeyer") is a citizen and resident of the County of St. Louis in the State of Missouri. He was a court designated lead counsel in the **MDL**. He is here sued in his individual capacity.

19. Defendant Niemeyer, Grebel & Kruse, LLC, ("Niemeyer Grebel"), is a limited liability corporation duly organized under the laws of the State of Missouri and, whose principal place of business is in St. Louis, Missouri. Niemeyer Grebel was at all times relevant the employer of Mark R. Niemeyer and is here sued on a theory of *respondeat superior*.

20. Defendant Daniel P. Massey, ("Massey"), is a citizen and resident of the County of Maricopa in the State of Arizona. He was at all times relevant individual attorney and counsel for the Plaintiff Jessica Casey in: ***Casey v. Bayer HealthCare Pharmaceuticals, Inc., et al.***; No. 14-cv-10387. He is here sued in his individual capacity.

21. Defendant Daniel Massey Law Firm, P.C., ("Massey Firm"), is a professional corporation organized and duly authorized under the laws of the State of Arizona. The Massey Firm's principal place of business is in the City of Scottsdale, County of Maricopa in the State of Arizona. The Massey Firm was at all times relevant the employer of Daniel P. Massey and is here sued on a theory of *respondeat superior*.

22. Defendant David M. Peterson, ("Peterson") is a citizen and resident of the City of Kansas City, County of Jackson in the State of Missouri. He was at all times relevant individual attorney and counsel for Melody Edwards in: ***Edwards v. Bayer Corporation, et al.***; No. 12-cv-11370. He is here sued in his individual capacity.

23. Defendant Peterson & Associates, P.C., ("Peterson & Associates") is a professional corporation organized and duly authorized under the laws of the State of Missouri.

Peterson & Associates' principal place of business is in the City of Kansas, County of Jackson in the State of Missouri. Peterson & Associates was at all times relevant the employer of David M. Peterson and is here sued on a theory of *respondeat superior*.

24. Defendant Gregory McEwen is a citizen and resident in the County of Dakota in the State of Minnesota. He was at all times relevant individual attorney and counsel for the Plaintiff Debbie Foster in: ***Foster v. Bayer HealthCare Pharmaceuticals, Inc., et al.***; No. 14-cv-10003. He is here sued in his individual capacity.

25. Defendant McEwen Law Firm, Ltd., ("McEwen Firm"), is a Minnesota Corporation organized and duly authorized under the laws of the State of Minnesota. The McEwen Firm's principal place of business is in the City of Inver Grove Heights, County of Dakota in the State of Minnesota. The McEwen Firm was at all times relevant the employer of Gregory McEwen and is here sued on a theory of *respondeat superior*.

THE CLASS

26. Representative Class Plaintiffs Casey, Edwards and Foster bring this case as a class action pursuant to the Illinois Code of Civil Procedure and Supreme Court Rules. Plaintiffs seek certification of a class of Illinois purchasers of Yaz and clients of the Defendants defined as:

> All individuals who were prescribed, obtained and consumed Bayer-manufactured Yaz and/or its generic, Bayer-manufactured counterparts from January 1, 1999 up to and including the present and whose cases against Bayer were dismissed with prejudice in the U.S. District Court by its order of January 7, 2016 (docketed January 11, 2016) for failure to comply with that Court's standing Case Management Order No. 79 because the Defendants Roger C. Denton, Michael S. Burg, Michael A. London, Mark R. Niemeyer, Daniel P. Massey, David M. Peterson, and Gregory McEwen breached the standard of care and their duties owed the named Plaintiffs and the Class resulting in their being damaged. Plaintiffs Jessica Casey, Melody Edwards and Debbie Foster are members and

representatives of the class in that they were prescribed, obtained and consumed Yaz and/or its generic Bayer-manufactured counter-part for their personal use within the class period and, as a result, suffered injury, damages and future injury as a consequence of said use. Plaintiffs' lawsuits were dismissed with prejudice because the above named Defendants' negligence resulting in their being damaged by their lost opportunity to be made whole.

27. This action is proper for class treatment under 735 ILCS 5/2-801 of the Illinois Code of Civil Procedure. The proposed class is so numerous that individual joinder of all members is impracticable. The exact number and identities of the class members are known to Plaintiffs based upon the Court's docketed order of January 11, 2016, the class number is forty four (44).

28. Questions of law and fact arise from Bayer's conduct in misrepresenting Yaz as a safe product suitable for consumption by consumers. Such questions are common to all Class members and predominate over any questions affecting only individual Class members.

29. Additionally, questions of law and fact arise from Lead and Liaison Class and Representative Counsel's conduct in facilitating the dismissal of the putative Class's complaints with prejudice by not complying with an order of Court. Such questions are common to all Class members and predominate over any questions affecting only individual Class members. The myriad of questions of law and fact common to the Class include but are not limited to:

a) whether Yaz causes arrhythmia, cardiac arrest/heart attack, intracardiac thrombus, pulmonary embolism, stroke or other cardiovascular complications in women in their child bearing years that consumed Yaz;

b) whether Bayer markets and misrepresents Yaz as a safe product, fit for human consumption;

c) whether Bayer failed to adequately disclose to consumers that the use of Yaz substantially increases the risks of arrhythmia, cardiac arrest/heart attack,

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intracardiac thrombus, pulmonary embolism, stroke or other cardiovascular complications;

d) whether Bayer's failure to disclose the dangers of Yaz is a material omission of fact;

e) whether Bayer engaged in a marketing practice intended to conceal the dangers of Yaz;

f) whether Bayer's sales and marketing practices constitutes strict products liability; defective manufacturing;

g) whether Bayer's sales and marketing practices constitutes strict products liability; design defect;

h) whether Bayer's sales and marketing practices violates product liability; defect due to inadequate warning;

i) whether Bayer's sales and marketing practices constitutes negligence;

j) whether Bayer's sales and marketing practices constitutes fraud; and,

k) whether Bayer's sales and marketing practices breaches express warranties of the product;

l) whether Bayer's sales and marketing practices breaches implied warranties of the product;

m) whether Bayer's sales and marketing practices violated the Plaintiff's applicable state consumer fraud and deceptive practices acts; and,

n) whether Bayer should be barred from marketing Yaz in a deceptive and uniform manner;

o) whether there existed an attorney-client relationship between Plaintiffs and the Class and, the Defendants, and each of them.

p) whether the Defendants, owed a duty to the Plaintiffs and the Class;

q) whether the Defendants, and each of them, breached their duty and the applicable standards of care by failing to abide by an order of court that resulted in the Plaintiffs and the Class' cases being dismissed;

r) were the Plaintiffs and the Class damaged as a result of the failures to act and omissions of the Defendants;

s) were the Defendants failures to act and omissions the proximate cause of the Plaintiffs and the Class' damages;

30. Plaintiffs will fairly and adequately represent and pursue the interests of Class members. Plaintiffs' counsel has vast experience in consumer class action cases. Plaintiffs believe that the nature of their claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Class.

31. Class treatment of these claims is an appropriate method for the fair and efficient adjudication of the controversy.

FACTS

Background Of The Sales And Marketing Of Yaz

32. Yaz®, Yasmin®, and, Ocella and Gianci (the generic counterparts) are birth control pills manufactured and marketed by Bayer Defendants. They are combination oral contraceptives, or "COCs," meaning that they contain an estrogen component and a progestin component. Together, these steroidal components work together in COCs to suppress ovulation, fertilization, and implantation and thus prevent pregnancy.

33. The progestin component of Yaz known as ***drospirenone*** when combined with the estrogen components was found to develop certain effects in users that are different from other progestins, and potentially more dangerous.

34. A dangerous effect of ***drospirenone*** is that it acts as a diuretic, which can cause an increase in potassium levels in the blood. This can lead to a condition known as hyperkalemia

if the potassium levels become too high. Hyperkalemia can cause heart rhythm disturbances, such as extrasystolies, pauses, or bradycardia. If left untreated, hyperkalemia can be fatal. If hyperkalemia disrupts the normal heart rhythms, the flow of blood through the heart can be slowed to the point that it permits blood clots to form. Blood clots in the heart can then lead to heart attacks, or the clots can break off and travel to the lungs where they can cause pulmonary embolism, or can travel to the brain causing stroke. The diuretic nature of ***drospirenone*** also attributes to blood clot formation elsewhere in the body.

35. An additional dangerous effect of ***drospirenone*** is that in acting as a diuretic, it can result in dehydration. Dehydration, may lead to the formation of gall stones and increased levels of cholesterol in the blood and, may lead to more serious gallbladder disease.

36. Upon information and belief, it was alleged that Bayer knew or should have known that the use of ***drospirenone*** in Yaz causes arrhythmia, cardiac arrest/heart attack, intracardiac thrombus, pulmonary embolism, deep vein thrombosis, stroke, and/or gallbladder disease, which can require surgical intervention.

37. During the brief time that Yaz has been sold in the United States, hundreds of reports of injury and death have been submitted to the FDA in association with Defendants' products. These reports include deaths associated with cardiac arrhythmia, cardiac arrest, intracardiac thrombus, pulmonary embolism, and stroke in women in their child bearing years.

38. Bayer not only ignored the increased risk of the development of the aforementioned injuries associated with the use of Yaz, but they have, through their marketing and advertising campaigns, urged women to use Yaz instead of birth control pills that present a safer alternative.

Plaintiffs' Use of Yasmin and Resulting Injuries

39. Notwithstanding claims of Bayer regarding the effectiveness and safety of Yaz, and/or its generic counterparts, Plaintiff's medical provider prescribed said to Jessica Casey which she then used.

40. As a direct and proximate result of using Yaz, Jessica Casey suffered injury from a thrombosis in the mid inferior vena cava in March 2010.

41. At the time of her injuries, Plaintiff Jessica Casey was unaware that Yaz was defective and presented a significantly higher risk of injuries, such as sinus thrombosis and she had no reason to believe that Bayer's acts and omissions caused her harm.

42. As a result of Bayer's claims regarding the effectiveness and safety of Yaz Plaintiff Melody Edward's medical provider prescribed and Plaintiff began using Yaz and/or its generic counterparts, in 2010 until she suffered sinus thrombosis on or about September 24, 2010.

43. At the time of her injuries, Plaintiff Melody Edwards was unaware that Yaz was defective and presented a significantly higher risk of injuries, such as sinus thrombosis and she had no reason to believe that Bayer's actions or omissions caused her harm.

44. As a direct and proximate result of using Yaz, Melody Edwards suffered the injuries described above.

45. Plaintiff Debbie Foster's medical provider prescribed and she began using Yaz, and/or its generic counterparts, in or about November, 2010.

46. As a direct and proximate result of using Yaz, Debbie Foster suffered from a

pulmonary embolism on or about January, 2011, resulting in ongoing physical pain, significant changes in lifestyle, medical, health, incidental and related expenses, medical monitoring and/or medications, and the fear of developing additional health consequences.

47. Ms. Foster did not know, nor could she have reasonably discovered through the use of reasonable diligence that Yaz wrongfully caused her to suffer a deep vein thrombosis on or about January, 2011, and that she had a claim against Bayer until less than one year from the date of filing her underlying action.

48. Despite the fact that Bayer knew or should have known of the serious health risks associated with the use of Yaz, and/or its generic counterparts, Bayer failed to warn the above named Plaintiffs and/or their health care providers of said serious risks before they used the product.

Plaintiffs' Underlying Causes Of Action

49. Named Plaintiffs brought their respective underlying cases against Defendants for damages associated with their ingestion of the pharmaceutical drugs Yaz (ethinyl estradiol and ***drospirenone***), an oral contraceptive designed, manufactured, marketed, and distributed by Defendants. The respective causes of the named Plaintiffs were: ***Jessica Casey v Bayer Health-care Pharmaceuticals, Inc., et al***, 3:14-cv-10387-DRH-PMF; ***Melody Edwards v. Bayer Corp-oration, Inc., et al***, 3:12-cv-11370-DRH-PMF; and, ***Debbie Foster v Bayer Healthcare Pharmaceuticals, Inc., et al***, 3:14-cv-10003-DRH-PMF. The afore were three of thousands of suits consolidated for pretrial proceedings in the MDL as part of multidistrict litigation in the Southern District of Illinois.

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50. Jessica Casey was originally represented by the Defendant Daniel P. Massey of the Daniel Massey Law Firm, P.C.

51. Melody Edwards was originally represented by the Defendants David M. Peterson of Peterson & Associates, P.C.

52. Debbie Foster was represented by the Defendant Gregory McEwen of the Defendant McEwen Law Firm, Ltd.

53. The underlying causes of action were thereafter transferred to the United States District Court for the Southern District of Illinois by the Judicial Panel on Multidistrict Litigation and captioned: ***In Re: Yasmin and Yaz (drospirenone) Marketing, Sales Practices and Products Liability Litigation***, 3:09-md-02100-DRH-CJP.

54. On or about November 10, 2009, responsive to a Plaintiffs' motion for class leadership, the MDL Court issued Order No. 2: Order Appointing Plaintiffs' Steering Committee and Interim Class Counsel, ("Order No. 2") naming Roger Denton as Liaison counsel, and, Michael S. Burg, Michael A. London and Mark R. Niemeyer as interim lead counsel. Denton, Burg, London and Niemeyer were also designated members of the Plaintiffs' Steering Committee, ("PSC").

55. MDL Order No. 2, set out duties and responsibilities of the PSC.

56. Among the numerous duties and responsibilities set out in the order of November 10, 2009, was a directive that Denton, Burg, London and Niemeyer were to "[s]ubmit and argue all verbal or written motions presented to the Court or Magistrate on behalf of the PSC as well as oppose when necessary any motions submitted by defendants or other parties which involve matters within the sphere of the responsibilities of the PSC."

57. By their appointment as Liaison and/or Class Counsel, Denton, Burg, London and Niemeyer were reposed by the Court and applicable statutes with duties to the putative class members of trust, confidence and loyalty.

58. In addition, Rule 23 of the Federal Rules Of Civil Procedure imposed upon Liaison and/or Class Counsel, Denton, Burg, London and Niemeyer that they must fairly and adequately represent the interests of the Class.

59. By their appointment as Liaison and/or Class Counsel, Denton, Burg, London and Niemeyer were, by the Court's order of November 10, 2009, fiduciaries of the putative class members.

60. Liaison and/or Class Counsel associated with the individual attorneys including; Defendant Daniel P. Massey of the Daniel Massey Law Firm, P.C., the Defendants David M. Peterson of Peterson & Associates, P.C. and Defendant Gregory McEwen of the Defendant McEwen Law Firm, Ltd. to pursue the prosecution of the Class' claims to make Plaintiffs and the Class whole as well as an award of attorneys fees and costs thus exhibiting and manifesting a community of interest.

61. In addition, Order No. 2 authorized control and management by Denton, Burg, London and Niemeyer over the class, the individual cases and individual counsel.

62. Liaison and/or Class Counsel and, the individual class attorneys had a proprietary interest in the MDL by advancing and incurring costs and expenses.

63. Liaison and/or Class Counsel associated with the individual class attorneys worked jointly and severally to obtain a resolution for the Plaintiffs to the class claims.

64. Liaison and/or Class Counsel and, the individual class attorneys maintained the

right to control the prosecution of the named class Plaintiff's cases.

65. Liaison and/or Class Counsel and, the individual class attorneys kept and ultimately would and/or did submit time and task for an award of attorneys fees at the conclusion of all phases of the case.

66. Conversely, Liaison and/or Class Counsel and, the individual class attorneys if unsuccessful would bear any losses in the area of costs advanced in prosecution of the litigation.

67. Liaison and/or Class Counsel and, the individual class attorneys were joint venturers.

68. During the course of the MDL, the underlying Defendant Bayer settled many of the cases in the consolidated litigation.

69. The remaining unsettled cases were subject to an order of the MDL in August of 2015; Case Management Order No. 79. ("CMO 79"), creating two "tracks" for purposes of resolving the remaining cases.

70. The tracks set out methods for resolving cases opting for settlement and providing for settlement negotiations (Section II) and other cases that were required discovery and expert reports in ostensible preparation for trial (Section III).

71. The individual Defendants, and each of them failed to abide by Sections II and III.

72. The August order set out hard and fast dates of compliance for both the underlying Plaintiffs and Defendant Bayer.

73. Pursuant to CMO 79, each Plaintiff had 14 days to file an opposition to the Bayer Defendants' motions to dismiss.

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74. CMO 79 further provided that failure to timely file a response in opposition "will result in an automatic dismissal with prejudice."

75. Liaison and/or Class Counsel and, the individual class attorneys failed to file responses in opposition to the Bayer Defendants' motion to dismiss.

76. As a result of the Liaison and/or Class Counsel and, the individual class attorneys failure to oppose the afore motion, on January 11, 2016 the Honorable Judge David R. Herndon ordered that the Plaintiffs and putative class members be dismissed with prejudice.

COUNT I

Legal Malpractice vs. Lead Attorneys And Individual Counsel

77. Plaintiff restates, realleges, adopts and incorporates the allegations set forth in as paragraphs 1. - 76. above as paragraphs 1. - 76. of Count I; ***in haec verba***.

78. The Individual Defendants, and each of them, jointly and severally, knew or should have known that their failure to file a timely response to Bayer's motion to dismiss would result in the loss of any rights or remedies that the Plaintiffs and the Class would have had against Bayer.

79. The Individual Defendants , and each of them, jointly and severally, owed a duty to the Plaintiffs and the putative class members to file a responsive pleading to Bayer's motion to dismiss within 14 days as set out in CMO 79 which mandated that they do so.

80. The Individual Defendants, and each of them, jointly and severally, violated the applicable standard of care for attorneys so situated or, otherwise, failed to exercise a reasonable degree of skill and care in their representation of the Plaintiffs and the putative class by failing to

file a responsive pleading to Bayer's motion to dismiss within 14 days as set out in CMO 79 which mandated that they do so.

81. As a direct and proximate result of the failures to act and omissions of the individually named Defendants aforesaid and their failures to act and omissions as more specifically described above, Plaintiffs and the putative class lost any recovery and/or any chance of recovery they may have had which would include compensation for any personal injury damages, lost wages and future damages that they suffered as a consequence of their consumption and ingestion of Yaz resulting in its deleterious effects on them.

82. Plaintiffs demand trial by jury for all non-equity matters.

WHEREFORE, Plaintiffs, Jessica Casey, Melody Edwards and Debbie Foster on behalf of themselves and all others similarly situated, pray this Court rule as follows:

A. Enter an order certifying the Class pursuant to 735 ILCS 5/2-801 of the Illinois Code of Civil Procedure and naming Plaintiffs as Class Representatives and their attorney as Lead Class Counsel to represent the Class;

B. Enter an order finding in favor of the Plaintiffs and the Class and against the individual Defendants Rogers C. Denton, Michael S. Burg, Michael A. London, Mark R. Niemeyer, Gregory McEwen, Daniel P. Massey and David M. Peterson; jointly and severally, as to the legal malpractice asserted herein;

C. Enter judgment against the individual Defendants Rogers C. Denton, Michael S. Burg, Michael A. London, Mark R. Niemeyer, Daniel P. Massey, David M. Peterson and Gregory McEwen.

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D. Enter an order awarding damages in an amount to be determined by the Court or jury;

E. Enter an order that prejudgment interest be assessed upon all amounts awarded;

F. Enter an order of restitution and all other forms of equitable monetary relief;

G. Enter an order awarding Plaintiffs and the Class expenses and costs of suit; and,

H. For such other and further relief as the Court deems appropriate.

COUNT II

Respondeat Superior Claim

83. Plaintiff restates, realleges, adopts and incorporates the allegations set forth in paragraphs 1.- 82. of Count I of this complaint as paragraph Nos. 1. - 82. of Count II; ***in haec verba***.

84. At all times relevant, the Defendant Roger C. Denton was an employee and agent of the Defendant Schlichter Bogard.

85. At all times relevant, the Defendant Denton acted within the scope of the agency or employment with the Defendant Schlichter Bogard in the course of providing legal services for the Schlichter Bogard clients.

86. Defendant Schlichter Bogard hired, retained, supervised and otherwise controlled their agent and employee Roger C. Denton.

87. As a direct and proximate result of the Defendant Denton's aforesaid negligent failures to act and/or omissions as more specifically described above, Jessica Casey, Melody Edwards, Debbie Foster and the Class have lost any recovery and/or any chance of recovery they may have had which would include compensation for any personal injury damages and lost

billing that they suffered as a consequence of the dismissal of January 11, 2016.

88. The Defendant Schlichter Bogard by virtue of their supervision and control of their agent and employee Roger C. Denton is vicariously liable for his failures to act and omissions.

89. At all times relevant, the Defendant Michael S. Burg was an employee and agent of the Defendant Burg Simpson.

90. At all times relevant, the Defendant Burg acted within the scope of the agency or employment with the Defendant Burg Simpson in the course of providing legal services for the Burg Simpson clients.

91. Defendant Burg Simpson hired, retained, supervised and otherwise controlled their agent and employee Michael S. Burg.

92. As a direct and proximate result of the Defendant Burg's aforesaid negligent failures to act and/or omissions as more specifically described above, Jessica Casey, Melody Edwards, Debbie Foster and the Class have lost any recovery and/or any chance of recovery they may have had which would include compensation for any personal injury damages and lost wages that they suffered as a consequence of the dismissal of January 11, 2016.

93. The Defendant Burg Simpson by virtue of their supervision and control of their agent and employee Michael S. Burg is vicariously liable for his failures to act and omissions.

94. At all times relevant, the Defendant Michael A. London was an employee and agent of the Defendant Douglas & London.

95. At all times relevant, the Defendant London acted within the scope of the agency or employment with the Defendant Douglas & London in the course of providing legal services

for the Defendant Douglas & London clients.

96. Defendant Douglas & London hired, retained, supervised and other-wise controlled their agent and employee Michael A. London.

97. As a direct and proximate result of the Defendant London's aforesaid negligent failures to act and/or omissions as more specifically described above, Jessica Casey, Melody Edwards, Debbie Foster and the Class have lost any recovery and/or any chance of recovery they may have had which would include compensation for any personal injury damages and lost wages that they suffered as a consequence of the dismissal of January 11, 2016.

98. The Defendant Douglas & London by virtue of their supervision and control of their agent and employee Michael A. London is vicariously liable for his failures to act and omissions.

99. At all times relevant, the Defendant Mark R. Niemeyer was an employee and agent of the Defendant Niemeyer Grebel.

100. At all times relevant, the Defendant Niemeyer acted within the scope of the agency or employment with the Defendant Niemeyer Grebel in the course of providing legal services for the Defendant Niemeyer Grebel clients.

101. Defendant Niemeyer Grebel hired, retained, supervised and otherwise controlled their agent and employee Mark R. Niemeyer

102. As a direct and proximate result of the Defendant Niemeyer's aforesaid negligent failures to act and/or omissions as more specifically described above, Jessica Casey, Melody Edwards, Debbie Foster and the Class have lost any recovery and/or any chance of recovery they may have had which would include compensation for any personal injury damages and lost

wages that they suffered as a consequence of the dismissal of January 11, 2016.

103. The Defendant Niemeyer Grebel by virtue of their supervision and control of their agent and employee Mark R. Niemeyer is vicariously liable for his failures to act and omissions.

104. At all times relevant, the Defendant Daniel P. Massey, was an employee and agent of the Defendant Daniel Massey Law Firm.

105. At all times relevant, the Defendant Massey acted within the scope of the agency or employment with the Defendant Daniel Massey Law Firm in the course of providing legal services for the Defendant Daniel Massey Law Firm clients.

106. Defendant Daniel Massey Law Firm hired, retained, supervised and otherwise controlled their agent and employee Daniel Massey.

107. As a direct and proximate result of the Defendant Massey's aforesaid negligent failures to act and/or omissions as more specifically described above, Jessica Casey, and the Class have lost any recovery and/or any chance of recovery they may have had which would include compensation for any personal injury damages and lost wages that they suffered as a consequence of the dismissal of January 11, 2016.

108. The Defendant Daniel Massey Law Firm, P.C., by virtue of their supervision and control of their agent and employee Daniel P. Massey is vicariously liable for his failures to act and omissions.

109. At all times relevant, the Defendant David M. Peterson was an employee and agent of the Defendant Peterson & Associates.

110. At all times relevant, the Defendant Peterson acted within the scope of the agency

or employment with the Defendant Peterson & Associates in the course of providing legal services for the Defendant Peterson & Associates clients.

111. Defendant Peterson & Associates hired, retained, supervised and otherwise controlled their agent and employee David M. Peterson.

112. As a direct and proximate result of the Defendant Peterson's aforesaid negligent failures to act and/or omissions as more specifically described above, Melody Edwards, and the Class have lost any recovery and/or any chance of recovery they may have had which would include compensation for any personal injury damages and lost wages that they suffered as a consequence of the dismissal of January 11, 2016.

113. The Defendant Peterson & Associates by virtue of their supervision and control of their agent and employee David Peterson is vicariously liable for his failures to act and omissions.

114. At all times relevant, the Defendant Gregory McEwen was an employee and agent of the Defendant McEwen Firm.

115. At all times relevant, the Defendant McEwen acted within the scope of the agency or employment with the Defendant McEwen Firm in the course of providing legal services for the Defendant McEwen Firm clients.

116. Defendant McEwen Firm hired, retained, supervised and otherwise controlled their agent and employee Gregory McEwen.

117. As a direct and proximate result of the Defendant McEwen's's aforesaid negligent failures to act and/or omissions as more specifically described above, Debbie Foster and the Class have lost any recovery and/or any chance of recovery they may have had which

would include compensation for any personal injury damages and lost wages that they suffered as a consequence of the dismissal of January 11, 2016.

118. The Defendant McEwen Firm by virtue of their supervision and control of their agent and employee Gregory McEwen is vicariously liable for his failures to act and omissions.

119. Plaintiffs demand trial by jury for all non-equity matters.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray this Honorable Court rule as follows:

A. Find that this matter qualifies for class treatment and enter an order certifying the Class pursuant to 735 ILCS 5/2-801 of the Illinois Code of Civil Procedure and naming Plaintiffs as Class Representatives and their attorney as Class Counsel to represent the Class;

B. Find that the Defendants Niemeyer, Grebel & Kruse, LLC; Burg, Simpson, Eldredge, Hersh & Jardine; Douglas & London, P.C.; Schlichter, Bogard & Denton, LLP; Daniel Massey Law Firm, P.C.; Peterson & Associates, P.C.; and, McEwen Law Firm, Ltd. are vicariously, jointly and severally, liable for the failures to act and omissions of the Defendants Roger C. Denton, Michael S. Burg, Michael A. London, Mark R. Niemeyer, Daniel P. Massey, David M. Peterson and Gregory McEwen.

C. Enter judgment against the Defendants Niemeyer, Grebel & Kruse, LLC; Burg, Simpson, Eldredge, Hersh & Jardine; Douglas & London, P.C.; Schlichter, Bogard & Denton, LLP; Daniel Massey Law Firm, P.C.; Peterson & Associates, P.C.; and, McEwen Law Firm, Ltd.

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D. Enter an order finding in favor of the Plaintiffs and the Class and against the Defendants Niemeyer, Grebel & Kruse, LLC; Burg, Simpson, Eldredge, Hersh & Jardine; Douglas & London, P.C.; Schlichter, Bogard & Denton, LLP; Daniel Massey Law Firm, P.C.; Peterson & Associates, P.C.; and, McEwen Law Firm, Ltd. upon principles of *respondeat superior*.

E. Enter an order awarding damages in an amount to be determined by the Court or jury;

F. Enter an order that prejudgment interest be assessed upon all amounts awarded;

G. Order restitution and all other forms of equitable monetary relief;

H. Enter an order awarding Plaintiffs and the Class expenses and costs of suit; and

I. For further relief as the Court deems appropriate.

Respectfully submitted:

s/ Kevin Rogers
Attorney for Plaintiffs and the Class

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

IN RE YASMIN AND YAZ (DROSPIRENONE) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	**3:09-md-02100-DRH-CJP** **MDL No. 2100**

This Document Relates to:

ALL CASES

ORDER #2
ORDER APPOINTING PLAINTIFFS' STEERING COMMITTEE

HERNDON, Chief Judge:

Pending before the Court are various applications for liaison counsel, for lead counsel and for the Plaintiffs' steering committee. Having carefully reviewed all of the submissions, the Court **APPOINTS** the following to Plaintiffs' Steering Committee:

Roger Denton as Liaison Counsel

Michael S. Burg as Co-Lead Counsel

Michael London as Co-Lead Counsel

Mark N. Niemeyer as Co-Lead Counsel

Andres F. Alonso

Daniel Becnel

A.J. DeBartolomeo

PL EX. 3

Thomas Girardi

Arnold Levin

Jeff Lowe

Roopal R. Luhana

Steven Maher

Trent Miracle

Mark Robinson

The responsibilities of Plaintiffs' Liaison Counsel shall be the following:

1. To serve as the recipient for all Court orders on behalf of all of the plaintiffs;

2. to coordinate service and filings for all plaintiffs whether presently included or subsequently added;

3. to maintain and distribute to co-counsel and to Defendants' Counsel an up-to-date service list;

4. to receive and distribute pleadings, orders, and motions by overnight courier service and/or telecopier within two days after receipt, unless such service has been waived, in writing, by a receiving counsel (until some program for electronic service can be arranged and agreed upon);

5. to coordinate the establishment of a document depository, real or virtual, to be available to all participating plaintiffs counsel;

6. to maintain and make available to all participating plaintiffs counsel of record at reasonable hours a complete file of all documents served by or upon

each party (except such documents as may be available at a document depository);

7. to prepare agendas for court conferences and periodically report regarding the status of the case; and

8. to carry out such other duties as the Court may order.

Liaison Counsel shall be entitled to seek reimbursement for costs expended at the time and in a manner approved by the Court.

Further, the PSC and Liaison Counsel shall coordinate the responsibilities of the PSC, schedule PSC meetings, keep minutes or transcripts of these meetings, appear at periodic Court noticed status conferences, perform other necessary administrative or logistic functions of the PSC, and carry out any duty as ordered by the Court.

The appointment to the PSC is of a personal nature. Accordingly, the above appointees cannot be substituted by other attorneys, including attorneys of the appointee's law firm, to perform the PSC's exclusive functions, such as committee meetings and court appearances, except without prior Court approval.

The PSC has the following duties:

Discovery

(1) Initiate and coordinate and conduct all pretrial discovery on behalf of plaintiffs in all actions which are consolidated with this multi district litigation.

(2) Develop and propose to the Court schedules for the commencement, execution and completion of all discovery on behalf of all plaintiffs.

(3) Cause to be issued in the name of all plaintiffs the necessary discovery requests, motions and subpoenas pertaining to any witnesses and documents needed to properly prepare for the pretrial of relevant issues found in the pleadings of this litigation. Similar requests notices, and subpoenas may be caused to be issued by the PSC upon written request by the individual attorney in order to assist him/her in the preparation of the pretrial stages of his/her client's particular claims.

(4) Conduct all discovery in a coordinated and consolidated manner on behalf and for the benefit of all plaintiffs.

Hearings and Meetings

(1) Call meetings of counsel for plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or of the Court. Initiate proposals, suggestions, schedules or joint briefs, and any other appropriate matters pertaining to pretrial proceedings.

(2) Examine witnesses and introduce evidence on behalf of plaintiffs at hearings.

(3) Act as spokesperson for all plaintiffs at pretrial proceedings and in response to any inquiries by the Court, subject of course to the right of any plaintiff's counsel to present non-repetitive individual or different positions.

Miscellaneous

(1) Submit and argue all verbal or written motions presented to the Court or Magistrate on behalf of the PSC as well as oppose when necessary any motions submitted by defendants or other parties which involve matters within the sphere of the responsibilities of the PSC.

(2) Negotiate and enter into stipulations with defendants regarding this litigation. All stipulations entered into by the PSC, except for strictly administrative details such as scheduling, must be submitted for Court approval and will not be binding until ratified by the Court. Any attorney not in agreement with a non-administrative stipulation shall file with the Court a written objection within 5 days after he/she knows or should have reasonably become aware of the stipulation. Failure to object within the term allowed shall be deemed a waiver and the stipulation will automatically be binding on that party.

(3) Explore, develop and pursue all settlement options pertaining to any claim or portion thereof of any case filed in this litigation.

(4) Maintain adequate files of all pretrial matters, including establishing and maintaining a document or exhibit depository, in either real or virtual format, and having those documents available, under reasonable terms and conditions for examinations by all MDL plaintiffs or their attorneys.

(5) Perform any task necessary and proper for the PSC to accomplish its responsibilities as defined by the Court's Orders, including organizing subcommittees comprised of plaintiffs' lawyers not on the PSC and assigning

them tasks consistent with the duties of the PSC. Membership on the subcommittees shall be subject to the approval of the Court. Compensation for work performed by the subcommittees and the approved cost will be paid by the common benefit funds.

(6) Perform other such functions that may be expressly authorized by further Court Orders.

Lastly, the Court **DENIES without prejudice** the motion to appoint interim class counsel (Doc. 144), as the Court **FINDS** that this PSC is adequately qualified to represent the interests of the class cases that have been filed.

IT IS SO ORDERED.

Signed this 10th day of November, 2009.

/s/ DavidRHerndon
Chief Judge
United States District Court

PL EX. 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

IN RE: YASMIN AND YAZ (DROSPIRENONE) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	)	3:09-md-02100-DRH-PMF MDL No. 2100

This Document Relates to: All Cases

CASE MANAGEMENT ORDER NO. 79
Non-ATE Case Resolution CMO

I. General Provisions

1. All proceedings in MDL No. 2100 are stayed until further order of the Court other than proceedings expressly contemplated by this Order and Case Management Orders relating to the ATE Master Settlement Agreement dated August 3, 2015 ("ATE Master Settlement Agreement"). The Court may rule on any pending motions to dismiss during the pendency of the stay; however, all other rulings on pending motions are stayed.

2. For purposes of this Order:

   a. "Alleged Injury" means any injury that a plaintiff identifies as the basis for any claim in a complaint, Plaintiff Fact Sheet or any other filing, submission or response;

   b. "Bayer Defendants" means defendant Bayer HealthCare Pharmaceuticals Inc. and affiliated entities that have been named as defendants in any lawsuit pending in MDL No. 2100; and

PL EX 4

c. "DCOC" means any drospirenone-containing oral contraceptive.

3. Various provisions of this Order require plaintiffs to serve documents on or provide notice to the Bayer Defendants. Such service and notice pursuant to this Order should be provided by e-mail and by either registered mail (with return receipt) or overnight delivery service to:

Jeffery Fields
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108
yazsubmissions@shb.com

II. VTE Cases Subject to Further Settlement Negotiations

1. The Court recognizes that the parties have successfully negotiated the resolution of a large number of cases alleging venous thromboembolisms ("VTEs") and expects the parties to continue such negotiations.

2. Within 60 days after entry of this Order, counsel for any plaintiff who believes additional efforts to settle a particular VTE case may be productive will provide a list of such cases to Bayer. Bayer will have 30 days to respond with its view about whether additional settlement efforts would be productive.

3. In any case in which the parties both agree that additional settlement efforts would be productive, the parties shall have a period of 60 days to negotiate in good faith a settlement of the claim. With the agreement of Special Master Randi Ellis, the parties may agree to extend this period for negotiations by an additional 30 days.

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4. If any claims subject to negotiations under this Section II have not settled at the conclusion of the negotiation period under Section II.3, those claims will be referred for mediation by Special Master Randi Ellis and, if mediation is unsuccessful, then the case will be subject to discovery and further litigation pursuant to further orders of the Court.

III. Other Cases

1. The provisions of this Section III apply to all plaintiffs asserting any claim in MDL No. 2100, including in cases filed in, removed to, or transferred to this MDL after the date of this Order, other than (i) VTE plaintiffs subject to the negotiation provisions of Section II above and (ii) plaintiffs who are Eligible Claimants within the meaning of ATE Master Settlement Agreement or who otherwise allege an arterial thromboembolism and are subject to the Non-Participating ATE CMO.

2. No later than 50 days after the entry of this Order, defendants shall notify counsel for any plaintiff who may be subject to this Section that the provisions of this section should apply to that case and shall identify the case(s) by plaintiff's name and docket number. If a plaintiff disagrees, the parties will meet and confer about whether the case should in fact be subject to this Section. Any disputes shall be submitted to Special Master Randi Ellis for resolution within 21 days.

3. Unless the parties agree or either the Court or Special Master Randi Ellis orders otherwise, within 120 days after the entry of this Order, each plaintiff subject to this Section will provide by registered mail (with return

receipt) or overnight delivery service a notice that any records relating to the plaintiff must be preserved, pending collection, to all of the following entities:

a. All pharmacies that dispensed any medication to the plaintiff (or other person who suffered the Alleged Injury) for a period from three years prior to the Alleged Injury to the present;

b. All physicians, medical facilities, and other healthcare providers who prescribed or provided samples of any DCOC to the plaintiff (or other person who suffered the Alleged Injury); and

c. All physicians, medical facilities and other healthcare providers who treated the plaintiff (or other person who suffered the Alleged Injury) for a period from three years prior to the Alleged Injury to the present.

4. Unless the parties agree or either the Court or Special Master Randi Ellis orders otherwise, within 120 days after entry of this Order, each plaintiff subject to this Section III will serve on the Bayer Defendants:

a. Contemporaneous and complete medical records sufficient to show each Alleged Injury on which the plaintiff's claims are based;

b. Contemporaneous and complete medical records sufficient to show use of a DCOC prior to each Alleged Injury;

c. An updated and complete Plaintiff Fact Sheet and authorizations that comply with CMO No. 12, in response to which defendants will serve a Defense Fact Sheet within 45 days;

d. All medical records in the plaintiff's possession relating in any way to the use of a DCOC and/or the Alleged Injury from any physician, medical facility, other healthcare provider or pharmacy;

e. A sworn certification by plaintiff's counsel or, if the plaintiff is proceeding *pro se*, by the plaintiff attesting that all medical records covered by Section III.4.d have been served on the Bayer Defendants and/or an explanation why any such records previously but no longer in the plaintiff's possession have not been served;

f. A sworn certification by plaintiff's counsel or, if the plaintiff is proceeding *pro se*, by the plaintiff attesting that the plaintiff has complied with Section III.3, including a list of the names and addresses of all entities to which the plaintiff provided notice under Section III.3, copies of the notices, and, once available, copies of return receipts or other proofs of delivery; and,

g. A case-specific expert report complying with Federal Rule of Civil Procedure 26(a)(2) on specific causation with respect to each Alleged Injury.

5. The claims of any plaintiff who does not comply with the requirements of Sections III.3 and III.4 within the applicable deadlines will be subject to a motion to dismiss with prejudice on the following schedule:

a. Within 60 days after the expiration of the deadlines under Sections III.3 and III.4, the Bayer Defendants will file a motion with the Court identifying plaintiffs who have failed to comply with Sections III.3 and III.4 and provide notice to the individual plaintiff's counsel;

b. Plaintiff shall have 14 days to file an opposition and the failure to do so will result in an automatic dismissal with prejudice;

c. If a plaintiff does file and opposition within 14 days, the Bayer Defendants will have 14 days to file a reply.

6. The claims of any plaintiff who complies with the requirements of Sections III.3 and III.4 will be subject to discovery and further litigation pursuant to further orders of the Court.

IT IS SO ORDERED.

Signed this 3rd day of August, 2015.

Digitally signed by David R. Herndon
Date: 2015.08.03 11:49:00 -05'00'

United States District Court

846 F.3d 211
United States Court of Appeals,
Seventh Circuit.

Jennifer DZIK, Plaintiff–Appellant,
v.
BAYER CORPORATION, et al.,
Defendants–Appellees.
No. 16-1333

|
Argued October 5, 2016
|
Decided January 13, 2017

Synopsis
Background: Patient brought personal injury action against pharmaceutical companies, alleging that she suffered a venous thromboembolism as result of using oral contraceptive prescription medication. The action consolidated with thousands of other cases for pretrial proceedings as part of a multidistrict litigation. The United States District Court for the Southern District of Illinois, David R. Herndon, J., dismissed the suit, and subsequently, 2016 WL 492648, denied patient's motion for reconsideration. Patient appealed.

[Holding:] The Court of Appeals held that dismissal with prejudice was warranted for want of prosecution.

Affirmed.

West Headnotes (3)

[1] Federal Courts
Effect of transfer and subsequent proceedings

Dismissal with prejudice of patient's individual personal injury suit, alleging that she suffered a venous thromboembolism as result of using oral contraceptive prescription medication, was warranted for want of prosecution, in multidistrict litigation against pharmaceutical companies that manufactured and marketed the medication, where the law firm patient hired to represent her failed to respond to companies' legitimate discovery request for approximately 15 months, failed to comply with the deadlines set forth in District Court's case-management order, failed to respond to companies' motion to dismiss, and took no action in the suit in the 18 months preceding dismissal order, until it filed postjudgment motion to set aside dismissal.

Cases that cite this headnote

[2] Federal Civil Procedure
Grounds and objections

Attorney inattentiveness to litigation is not excusable neglect, as required to support a motion to set aside dismissal of an action for want of prosecution, no matter what the resulting consequences the attorney's somnolent behavior may have on a litigant.

Cases that cite this headnote

[3] Federal Courts
Effect of transfer and subsequent proceedings

District courts handling complex, multidistrict litigation must be given wide latitude with regard to case management in order to achieve efficiency; that discretion extends to dismissing individual suits for noncompliance with the court's orders, including discovery orders.

Cases that cite this headnote

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PL EX. 5

*212 Appeal from the United States District Court for the Southern District of Illinois. No. 10–cv–20389—David R. Herndon, *Judge*.

Attorneys and Law Firms

Marvin B. Berke, Attorney, BERKE, BERKE & BERKE, Chattanooga, TN, for Plaintiff-Appellant.

John Edward Galvin, III, Attorney, FOX GALVIN, St. Louis, MO, Kaspar J. Stoffelmayr, Attorney, BARTLIT, BECK, HERMAN, PALENCHAR & SCOTT LLP, Chicago, IL, for Defendants-Appellees.
Before BAUER, Flaum, and Kanne, Circuit Judges.

Opinion

Per Curiam.

Jennifer Dzik challenges the dismissal of her personal-injury suit after the law firm she retained (which continues to represent her in this appeal) ignored a legitimate discovery request for more than a year, flouted the requirements of a case-management order, and failed to respond to a motion to dismiss. Given these lapses, we conclude that the district court acted well within its discretion in dismissing the action.

This lawsuit is one of thousands consolidated for pretrial proceedings as part of multidistrict litigation in the Southern District of Illinois. Dzik alleges that she suffered a venous thromboembolism (or "VTE," a blood clot in a deep vein) because she was using the drug Yasmin, a *213 prescription birth control pill marketed by the defendants, a group of related pharmaceutical companies collectively known as Bayer. But medical records Dzik disclosed during discovery revealed that she last had filled a Yasmin prescription ten months before her injury. When Bayer began probing the ten-month gap, Dzik's counsel of record (Chattanooga, Tennessee, attorneys Marvin Berke and Megan England) "suggested" that her doctor had provided samples of Yasmin shortly before Dzik suffered the VTE. Bayer then requested additional medical records or even an affidavit from Dzik's doctor substantiating her use of the drug near the time of her injury.

That was in May 2014, but Dzik's counsel simply ignored Bayer's discovery request over the next fifteen months. Meanwhile, Bayer settled many of the other cases in the consolidated litigation, prompting the district court to enter a case-management order in August 2015 to resolve those still pending. That order created two tracks: Section II governed cases in which the parties could agree that further negotiations might prove fruitful, and Section III applied to all other cases. Under Section II, "counsel for any plaintiff who believes additional efforts to settle a particular VTE case may be productive" had sixty days to notify Bayer that the party wished to continue negotiations; Bayer then had thirty days to respond, and, if the parties were in agreement, the case would be stayed for sixty to ninety days to facilitate settlement. For all other cases—including VTE cases in which settlement efforts had stalled—Bayer was tasked with notifying the plaintiff's counsel within fifty days that her lawsuit was subject to Section III. Absent a timely objection prompting movement of the case to the settlement track, a plaintiff subject to Section III had 120 days to provide Bayer with a Plaintiff Fact Sheet, certain medical and pharmacy records, and a report from an expert addressing whether Yasmin caused the plaintiff's injury. The order also specified that, for any plaintiff who failed to comply, Bayer should promptly move to dismiss with prejudice after the deadlines lapsed. Finally, the order provided for ***automatic*** dismissal with prejudice should any plaintiff fail to oppose, within fourteen days, a properly filed motion to dismiss.

Dzik's attorneys did not invoke Section II of the case-management order by telling Bayer that settlement talks could be productive. Instead, in September 2015 (seven weeks after entry of the case-management order) Bayer sent an e-mail notifying attorneys Berke and England that Dzik's case was subject to Section III, which obligated her either to dispute that classification or else comply with the discovery requirements in the case-management order. Berke and England did not respond.

Then on December 18, 2015, Bayer moved to dismiss several dozen cases, including Dzik's. Dzik failed to respond to that motion within the fourteen days allotted by the case-management order, and on January 11, 2016, the district court entered judgment dismissing her suit with prejudice.

[1]Attorney Berke, who at that point had taken no action in the case for nearly two years, responded to the dismissal by filing—the very next day—a motion to set aside the dismissal. England, his co-counsel of record, is not named in that filing; instead a new lawyer, Charles Flynn, is listed with Berke as counsel. Berke asserted that Bayer had mistakenly treated Dzik's case as one subject to Section III of the case-management order, even though, the lawyer insisted, she should be in the Section II track to allow for further settlement discussions. Moreover, Berke continued, his failure to oppose the motion to dismiss should be deemed "excusable neglect"

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*214 because he had missed seeing Bayer's motion while traveling to celebrate his fiftieth wedding anniversary. Berke said nothing at all about why he had failed to oppose the Section III designation when Bayer sent its e-mail *three months* before the motion to dismiss was filed. Neither did he explain why the lawsuit had not been monitored in his absence by England or Flynn (or anyone else at the firm). Bayer opposed Dzik's effort to reinstate her lawsuit, and the district court denied her motion.

In this appeal the parties address the ruling on Dzik's postjudgment motion and the underlying dismissal of her lawsuit as if those two decisions present distinct issues, but really they do not. We address that inquiry by evaluating both rulings together, and start by noting that the affidavits submitted by Dzik's attorneys with their postjudgment motion directly contradict the sworn account provided by Bayer's counsel. Along with the anniversary-trip excuse, Berke attests in his affidavit: "Attorneys from Affiant's office have been in contact with liaison counsel within the last 90 days. After these discussions Affiant determined that an additional medical record was needed and has proceeded to try to obtain that." Flynn (the other attorney whose name appears on the postjudgment motion) likewise attests in his affidavit that "attorneys" from his office had negotiated the case within the previous ninety days, and that he "did not receive" an electronic notice that Bayer's motion to dismiss had been filed (the second representation undoubtedly is true, since even now Flynn has not entered an appearance in the district court).

An attorney with Shook Hardy & Bacon, Bayer's settlement counsel, responded with an affidavit recounting that Dzik's lawyers never responded after Bayer had requested additional medical records or an affidavit from her physician substantiating Dzik's use of Yasmin. The lawyer gave a precise date in May 2014—nearly two years before the case was dismissed—when communication with Dzik's lawyers last occurred. Bayer's lawyer also named the attorney at his firm who had sent Berke the e-mail requesting evidence that Dzik used Yasmin after filling the final prescription. And the lawyer swore that his firm had not received "further communication of any kind from plaintiffs prior to the filing of their motion for relief from the judgment." Moreover, Bayer's lawyer attested that, before submitting his affidavit, he had "reviewed our records and discussed the matter with other attorneys at my firm to confirm my recollection of the history of negotiations." Berke replied to Bayer's response but said nothing further in the district court about his sworn representation that his firm's "attorneys" had communicated with Bayer's defense team within ninety days of dismissal. Yet at oral argument when we pressed Berke to tell us whether his firm had taken *any* action in Dzik's lawsuit in the eighteen months preceding its dismissal, he revived his assertion that communications had taken place between the parties' lawyers, though he did not name any lawyer for either side who supposedly had participated. Instead he told us that there is "no question" that negotiations had taken place within ninety days of dismissal, and he even went so far as to assert that *both* sides' affidavits say so. Plainly, the affidavit from Bayer's lawyer says no such thing.

We are troubled by the degree to which these accounts directly contradict. And though it is possible that Bayer's lawyer is mistaken, we see no reason to draw that conclusion. For one thing, Berke's firm presently has only four attorneys (two named Berke, and two named Flynn), so his inability to name the "attorneys" at the firm who purportedly negotiated with Bayer's *215 lawyer is a red flag. It also seems that, after Megan England (Berke's original co-counsel) left the firm, Flynn never entered an appearance in the district court. Conversely, Bayer provided the district court with a detailed timeline, including the date and name of the attorney who last communicated with anyone representing Dzik. While we can't be certain that "attorneys" from Berke's firm didn't try to contact Bayer within ninety days of dismissal, the vagueness of the affidavits from plaintiff's counsel and Berke's misrepresentation at oral argument about the affidavit from Bayer's lawyer leads us to think it more likely that the case slipped through the cracks, with no attorney (or paralegal or secretary) monitoring it, leaving Berke and Flynn scrambling to salvage what their motion for reconsideration concedes was "neglect" by the firm.

What is more, the affidavits from Dzik's lawyers say nothing relevant to excuse the inattention that led to the dismissal. Berke and Flynn do not challenge Bayer's version of events, including that their firm ignored the company's May 2014 request for evidence that Dzik took Yasmin shortly before her injury. (Indeed, this discovery request never was fulfilled.) Nor have Dzik's lawyers denied that they failed to comply with the requirements of the case-management order under *either* Section II (to affirmatively notify Bayer and engage in active negotiations) or under Section III (to provide discovery and expert reports in preparation for trial). Rather, counsel argue that Dzik's case never should have been placed in the Section III "track" because she alleges a VTE. And, they continue, the district court erred in denying the motion for relief in light of Berke's contention that his vacation constituted "excusable neglect" exonerating the law firm's inaction when Bayer moved to dismiss.

Dzik's argument that her case belonged in Section III rests on a misreading of the district court's case-management order.

PL EX. 5

Dzik's lawyers assert that Section II governs all cases alleging VTE injuries and that Section III applies only to lawsuits alleging that Yasmin caused other types of injuries. But nothing in the language of the court's order could lead to this reading. Both sections of the order govern plaintiffs alleging VTE injuries; the separate "tracks" distinguish between those plaintiffs still in active negotiations and those whose cases should move toward trial because efforts were not fruitful. Dzik's argument that no case alleging a VTE injury should be subject to dismissal under Section III contradicts the unambiguous language of the order. Berke's insistence at argument that "all the lawyers" in his office have now read the case-management order but still cannot understand how Dzik's case "became" subject to Section III is preposterous—the order is crystal clear.

More disturbing is Dzik's repeated assertion to us that Bayer told the district court that she "did not suffer a VTE despite actual knowledge that she did." This representation is unfounded. Bayer never told the district court that Dzik "did not endure a VTE," as her counsel allege. Rather, Bayer correctly represented that Dzik had not complied with the court's case-management order. Dzik's counsel had ample opportunity to dispute the "Section III" classification and, indeed, to satisfy Bayer's request—more than a year earlier—for evidence that Dzik took Yasmin near the time of her injury.

Dzik's remaining argument fares no better. She contends that her lawyers "acted in good faith towards bringing this case to a resolution" and, for that reason, the dismissal should be set aside even if we conclude that Section III of the case- *216 management order applied. Dzik reasons that, because *Berke* was out of state when Bayer moved for dismissal, the firm's failure to respond resulted from surprise or excusable neglect. Dzik's lawyers—Berke and Flynn—explain that the job of a plaintiff's lawyer "consists of mostly nothing, sprinkled in with the occasional update to the client." Less should be expected of them, they infer, in contrast with Bayer's lawyers, who have "lived and breathed these cases."

[2]This argument is absurd. By focusing on the three weeks during which they ignored Bayer's motion to dismiss, Berke and Flynn gloss over their failure to do *anything* to advance Dzik's case over the previous eighteen months, including not providing discovery. We have explained that "attorney inattentiveness to litigation is not excusable, no matter what the resulting consequences the attorney's somnolent behavior may have on a litigant." *Harrington v. City of Chicago*, 433 F.3d 542, 546 (7th Cir. 2006) (quoting *Easley v. Kirmsee*, 382 F.3d 693, 698 (7th Cir. 2004)). And counsel have not even suggested that, if the lawsuit had not been dismissed, Dzik could have complied with Bayer's discovery demand and substantiated their firm's representation that, despite not filling a Yasmin prescription for nearly a year preceding her injury, Dzik was still taking the drug. Their brief also fails to explain why Flynn (who, presumably, was not vacationing with Berke and his wife) was not watching the case while Berke was away. Furthermore, nearly four months elapsed between Bayer's e-mail to Dzik's counsel identifying her case as subject to Section III and the court's dismissal, yet counsel took no (documented) action during that period.

[3]District courts handling complex, multidistrict litigation "must be given wide latitude with regard to case management" in order to achieve efficiency. *In re Asbestos Prods. Liab. Litig. (No. VI)*, 718 F.3d 236, 243, 246–48 (3rd Cir. 2013); *accord In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.*, 496 F.3d 863, 867–68 (8th Cir. 2007); *In re Phenylpro–panolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1252–53 (9th Cir. 2006). That discretion extends to dismissing individual suits for noncompliance with the court's orders, including discovery orders. *In re Guidant Corp.*, 496 F.3d at 867–68; *In re PPA Prods. Liab. Litig.*, 460 F.3d at 1252–53. Considering that Dzik's lawyers—in their own words—did "mostly nothing" after filing this lawsuit, the district court did not abuse its discretion by dismissing the case with prejudice.

The judgment of the district court is AFFIRMED.

All Citations

846 F.3d 211

End of Document

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STATE OF ILLINOIS)
) SS
COUNTY OF ST CLAIR)

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST CLAIR COUNTY, ILLINOIS

JESSICA CASEY, et al,	)	
	)	
Plaintiffs,	)	**NO. 2017 L 250**
	)	
v.	)	
	)	
ROGER C. DENTON, et al,	)	
	)	
Defendants.	)	

EXHIBITS TO SUPPORT CLASS CERTIFICATION

Pl Ex 1. Order Granting With Prejudice Dismissal Pursuant To CMO 79. ***In Re: Yasmin and Yaz (drospirenone) Marketing, Sales Practices and Products Liability Litigation***, 3:09-md-02100-DRH-CJP;

Pl Ex 2. Class Action Complaint

Pl Ex 3. Order No. 2 Appointing Plaintiffs' Steering Committee and Interim Class Counsel; ***In Re: Yasmin and Yaz (drospirenone) Marketing, Sales Practices and Products Liability Litigation***, 3:09-md-02100-DRH-CJP;

Pl Ex 4 Case Management Order No. 79***; In Re: Yasmin and Yaz (drospirenone) Marketing, Sales Practices and Products Liability Litigation***, 3:09-md-02100-DRH-CJP;

Pl Ex 5. ***Dzik v. Bayer Corp., et al***, 846 F3d 211, 215 (7th Cir. 2017)

Dated: May 11, 2017

Respectfully submitted:

s/ Kevin Rogers
Attorney for the Plaintiffs and the Proposed Class

Kevin Rogers ARDC # 6192609
307 N. Michigan Avenue, Suite 305
Chicago, IL 60601
T/F: (312) 332-1188 / (312) 332-0192
email: Kevin@kevinrogerslaw.com

STATE OF ILLINOIS)
) SS
COUNTY OF ST CLAIR)

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST CLAIR COUNTY, ILLINOIS

Kahalah A. Clay
Electronically Filed
Transaction Id : 1716328914
2017L000250
FILEDATE : 05/11/2017
HODGKINS,EMILY

JESSICA CASEY, et al,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**NO. 2017 L 250**
	)	
ROGER C. DENTON, et al,	)	
	)	
Defendants.	)	

NOTICE OF FILING

TO: (See Service List Attached)

PLEASE TAKE NOTICE that we have caused to be filed with the Clerk of the Circuit Court of St. Clair County, the following document: **PLAINTIFFS' MOTION FOR CLASS CERTIFICATION;** a copy of which is herewith served upon you contemporaneously with this notice.

DATED at Chicago, Illinois this 11th day May, 2017.

s/ Kevin Rogers
Attorney for the Plaintiffs and the Class

Kevin Rogers #6192609
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CERTIFICATE OF SERVICE

I, Kevin Rogers, an attorney state that I served the within Plaintiffs' Motion For Class Certification to the party(ies) within named at the postal addresses herein listed by deposition same in the U.S. Mail from Chicago, Illinois 60601 on May 11, 2017, before 5:00 PM with postage prepaid.

By: s/ Kevin Rogers

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